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IN THE

Supreme Court of the United States

October Term, 1963

No. 845

378 REALTY CORP., 110TH ST. HOTEL CORP., TIMNAT ASSOCIATES, INC., PETER STUYVESANT 86TH CORP., SCHUYLER ASSOCIATES, VICTOR ASSOCIATES, INC., and ENDICOTT APARTMENT HOTEL, suing on behalf of themselves and all other owners, operators and lessees of hotels similarly situated in the City of New York,

Appellants,

v.

NEW YORK CITY RENT AND REHABILITATION ADMINISTRATION and HORTENSE W. GABEL, individually and as City Rent and Rehabilitation Administrator,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of the Court of Appeals of the State of New York denying a rehearing as to that Court's original decision affirming a judgment in Appellees' favor rendered by the Supreme Court of the State of New York, County of New York, and holding that certain challenged provisions of (1) the New York State Emergency Housing Rent Control Law of 1961 together with correlative provisions of the State Rent Commission's Rent and Eviction Regulations, and (2) of the 1962 Rent and Rehabilitation Law of the City of New York together with correlative provisions of the Rent, Eviction and Rehabilitation Regulations of the Appellees, were and are constitutionally valid under both the Constitutions of the

State of New York and of the United States. That the New York Court of Appeals specifically upheld the challenged Statutes as not violating any provision of the federal constitution is manifest from the Remittitur (R. 2B-5B)* filed by that Court, as amended.

The effect of the judgment appealed from is to sustain, contrary to Appellants' contentions, the constitutional validity of the challenged provisions of the State and City Laws under the Federal Constitution, as that constitutionality is construed by the New York Court of Appeals.

Opinions Below

The New York Court of Appeals affirmed the judgment of Special Term below, *without opinion*, 13 N Y 2d 817. Similarly, reargument was denied without opinion but an application for amendment of the Remittitur was granted and the Remittitur was amended to make clear the consideration by the Court of Appeals of the federal constitution in passing upon the validity of the challenged statutes, 13 N Y 2d 902 (1963). The decision of the New York County Supreme Court at Special Term is officially reported in 39 Misc. 2d 30, and is reprinted hereinafter as Appendix A (*infra*, pp. 1a-9a). The order and judgment of the New York County Supreme Court which was considered by the New York Court of Appeals, and affirmed

* Because the exhibits were voluminous, Appellants were permitted to dispense with printing them in the Court below. Accordingly, only sufficient copies were otherwise prepared for the use of the Court and the parties. The certified record below, as filed in this Court, consists, in the main, of the Record on Appeal below and a copy of the aforementioned Volume of Exhibits. Hence, reference to the Record on Appeal filed in the Court below and certified to this Court are designated "(R.)". References to the Exhibit Volume provided the Court below and certified to this Court are hereafter designated "(Ex. p.)". Reference to the Appendix hereto are designated "(App.)".

without opinion, is reprinted hereinafter as Appendix B (*infra*, pp. 10a-13a). The judgment of the Court of Appeals and its decision denying rehearing are reprinted hereinafter as Appendix C (*infra*, pp. 14a-16a).

Jurisdiction

The original decision of the New York State Court of Appeals was rendered July 10, 1963. The judgment of the Court of Appeals was made the judgment of the New York County Supreme Court by *ex Parte* order made and entered on August 8, 1963. Appellants applied to the Court of Appeals for reargument but reargument was denied on October 3, 1963. Thereafter on December 20, 1963 Notice of Appeal to this Court was duly served and then filed with the Clerk of the New York County Supreme Court, the Court wherein the Record on Appeal ultimately reposed.

Jurisdiction is based on 28 U. S. C. § 1257(2); *Allied Stores of Ohio* v. *Bowers*, 358 U. S. 522 (1959); *Boales* v. *Willingham*, 321 U. S. 503 (1944); *Yakus* v. *United States*, 321 U. S. 414 (1944); *Schechter* v. *United States*, 295 U. S. 495 (1935); *Missouri ex rel. Missouri Ins. Co.* v. *Gehner*, 281 U. S. 313 (1930).

Statutes Involved

Section 2(b) of the New York State Emergency Housing Rent Control Law, 1961 Laws of New York, ch. 337, § 2(b); § 3(7) of the Rent and Eviction Regulations of the Temporary State Housing Rent Commission, McK. *Unconsolidated Laws*, Vol. 65, Part 3 (Pocket Part) p. 26; § Y41-3.0(e)(2)(c) of the New York City Rent and Rehabilitation Law, Local Laws of New York for 1962, No. 20, eff. May 1, 1962 [re-numbered as chapter 51 of Title Y of the New York City Administrative Code by c. 100, Loc. L. 1963, eff. March 19, 1963]; and § 3(d) of the New York City Rent, Eviction and Rehabilitation Regulations, are set forth in Appendix D hereto (*infra*, pp. 17a-20a).

Questions Presented

1. Did the legislatures of the State and City of New York, in enacting a retrospective statute the effect of which was to mandate a class of property owners to fulfill an impossible requirement as a condition precedent to the continued enjoyment of their respective properties, deprive such property owners of their property and property rights without due process of law?

2. Does the absence therein of sufficiently definite and reasonably ascertainable standards for the administration and application thereof render certain provisions of § 2(b) of the New York State Emergency Housing Rent Control Law of 1961 and of § Y51-3.0(e)(2)(c) of the New York City Rent and Rehabilitation Law constitutionally invalid for lack of due process?

3. Did the Legislatures of the State and City of New York, by reimposing rent controls on hotels previously decontrolled without a concomitant finding of a new emergency, deprive property owners recontrolled thereby of property and property rights without due process of law?

Statement of the Case

Preliminary Statement:—

This appeal involves the deprivation and confiscation of substantial property rights by certain legislative enactments and their administrative application. We believe that the enactments—at best, the arbitrary and unreasonable exercise of the police power of the State and local governments—resulted either from a misunderstanding or misapplication of the historical facts of rent control as it was enacted and re-enacted into law by the Congress of the United States. Alternatively, and absent such misunderstanding or misapplication, the statute here involved is clearly confiscatory as to certain of the plaintiffs due to

its establishment of a condition precedent, *impossible of fulfillment*, as the touchstone for these plaintiffs' continued enjoyment of previously acquired, valuable property rights.

Additionally, the uncontradicted record before this Court clearly demonstrates that the challenged provisions of the applicable statutes contain inadequate standards—i.e., constitutionally, no standards—by which either the respondents or appellants can uniformly determine what a hotel is or when it ceases to be one.

While, as stated above, the confiscatory aspects of the challenged statutes affect some of the plaintiffs and their class, the "standards" aspect affects them all.

The Facts

The Parties:—

In this class action, all appellants are hotels located in the City of New York. With the exception of the Peter Stuyvesant Hotel, all are members of the Associated Hotels & Motels, Inc., a thirty year old trade association representing over one hundred seventy of what are denominated the "smaller" or "moderately priced" hotels in this city. The properties of the Association membership alone consist of over 31,000 rooms; represent fee ownerships as well as leaseholds; employ thousands of people; and are assessed on the tax rolls of the City of New York at $67,109,600 (R. 74-75). The properties of the named appellants and those of other owners, operators and lessees similarly situated represent capital investments in excess of one hundred million dollars.

Respondents are respectively the City Rent Control Agency established by Local Law 20 of the 1962 Laws of the City of New York, and its Administrator.

Appellants sued on their own behalf, as well as on behalf of other hotels similarly situated. For the purposes of this action the appellants, and the hotels within the litigating

class, fall into two "classification" categories, i.e., the "federal status" hotels and the "opinion" or "state order" hotels. The distinction between these categories is whether a particular property was recognized and classified as a hotel by the federal rent control authorities or whether it was not.

Proceedings Below:—

In February, 1963, Appellants commenced this class action in the Supreme Court of the State of New York, County of New York seeking a declaratory judgment of that Court that certain challenged provisions of the New York State Emergency Housing Rent Control Act and the New York City Rent and Rehabilitation Law of 1962, together with corresponding provisions of the administering agencies' regulations, were unconstitutional under both the State and Federal Constitutions. Appellants' complaint sought *only* this declaration and prayed for an implementing injunction restraining the enforcement of the challenged portions of the statutes (R. 31-32). The Appellees answered, contending that the challenged legislation was valid in all respects and praying for a declaration of constitutional validity (R. 47-49). Both sides moved for summary judgment and the New York County Supreme Court decided all issues adversely to Appellants, and, on May 7, 1963, granted to Appellees a declaratory judgment that the challenged provisions of the State and Local Rent Control Laws were valid under both the State and Federal Constitutions (App. 10a-13a).

Appellants appealed directly to the New York State Court of Appeals under the authority of § 588(4) of the New York Civil Practice Act (R. 3-5) permitting such direct appeals where there is solely presented on such appeal a constitutional question of the validity, under either the State or Federal Constitutions, of a particular action or statute or local ordinance. On appeal, the Court of Appeals affirmed the judgment of the Court below, *without opinion.*

From the inception of the litigation, Appellants have contended that the challenged portions of the statutes involved herein are violative of the due process requirements of the United States Constitution because they effect an arbitrary and unreasonable confiscation of Appellants' hotel properties and property rights therein, (i.e., the right to continued decontrolled status, once acquired) and because, as the uncontradicted record discloses, these statutes lacked the clear, definitive standards for administrative guidance which are fundamentally requisite to constitutional validity. These arguments were urged throughout the complaint (R. 15-45), were passed on by the Court at Special Term (App. 10a-13a), and by the New York Court of Appeals (App. 16a).

The Local Law:—

In April 1962, acting pursuant to the authority of Chapter 21, § 5, of the Laws of 1962 (Local Emergency Housing Rent Control Act) the City Rent & Rehabilitation Law [1], effective May 1, 1962, was adopted by the City Council and approved by the Mayor of the City of New York. This Law, insofar as here relevant,[2] and as respondents agree (R. 12, 114), is a virtual repromulgation of the pre-existing provisions of § 2(2)(b) of c. 337 of the Laws of 1961 (The New York State Emergency Housing Rent Control Law). Subsequently adopted Rent, Eviction and Rehabilitation Regulations of the newly created City Rent & Rehabilitation Administration are likewise adoptions and repromulgations of corresponding provisions of the pre-existing regulations of the State Rent Commission (App. 18a, 19a-20a).

When the City Council of the City of New York enacted Local Law 20 in April 1962, it did so (1) after extended

[1] Local Law 20 of the Local Laws of the City of New York for 1962.

[2] Sec. Y41-3.0(e)(2)(c), renumbered as § Y51-3.0(e)(2)(c) by c. 100, Local L. 1963, eff. March 19, 1963.

public hearings conducted by its Committee on General Welfare in March 1962 and (2) after consideration of the bill by the General Welfare Committee at several meetings held subsequent to the public hearings. The hearings themselves were widely attended and, as reported by the Committee [3], many diverse points of view were expressed concerning many aspects of the proposed law. The total testimony consisted of 509 pages which were transcribed and recorded. Yet, as the uncontradicted record before this Court reveals, an examination of the entire transcript (upon which was predicated the Committee's recommendations to the Council of the necessity and advisability of enacting Local Law 20) discloses that there was no evidence before that Committee—hence the Council—upon which to predicate the enactment of the challenged provisions [4] or from which the Council could even rationally infer the advisability of such enactment (R. 52-53). Indeed, it was intended that the State Housing Rent Control Law provision and the relevant Regulations upon which § Y41-3.0(e)(2)(c) was modelled, together with the body of decisional law interpreting same, be copied *intact* into the City Law and Regulations.

Additionally, Section Y41-17.0 of Local Law 20 [now § Y51-17.0] requires that the City Rent Agency administer any relevant provisions of the State Rent Control Act should any provision of the local law be finally declared invalid. Such "relevant" provisions of the State Act are, of course, the identical ones copied by the City Council into the local law.

The State Act:—

Since the issues on this appeal are identical under the challenged provisions of the City and State acts and since the former derives from and is essentially the same as the

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[3] Report of the Committee on General Welfare, April 10, 1962.

[4] Ftn. 2, *supra*.

latter, the facts pertaining to the State Act are necessarily germane.

On May 1, 1950, New York State assumed jurisdiction over all rent control. (R. 37).

The New York State Emergency Housing Rent Control Law of 1950 continued the pre-existing decontrol of "*transient*" housing accommodations in any establishment commonly regarded as a hotel in the community in which it is located, * * *." It only retained control over "hotel tenants" in such establishments; *i.e.*, persons continuously residing therein for at least ninety days prior to March 1, 1950 (R. 37).

Following the legislative intendment, the Administrator, McGoldrick, adopted March 1, 1950, *instead of June 30, 1947*, (the date fixed by the federal Act), as the date on which a hotel, qualifying as such under the Regulations, must have been "commonly regarded as a hotel in the community * * * " (R. 38). And, this establishment by the Administrator of *a brand new criterion for the acquisition of "hotel status"* by a particular property was adopted by the Legislature in 1951.[5]

Residential hotels, re-controlled by the congress in 1949 (R. 37), remained subject to state controls after the State takeover until, in 1951, the Legislature extended decontrol to all hotels irrespective of whether transient or residential in nature (R. 38).

Appellants Peter Stuyvesant Hotel (Peter Stuyvesant 86th Corp.), Cambridge Hotel (110th St. Hotel Corp.), National Hotel (Timnat Associates, Inc.), Irving Hotel (Victor Associates, Inc.) and Schuyler Arms Hotel (Schuyler Associates) were all classified as hotels throughout the federal rent control period of 1943 to 1950. Hence, they had acquired the "federal status" classification involved herein. However, Appellants West End Plaza Hotel (378 Realty

[5] L. 1951, c. 443, § 2, eff. April 2, 1951.

Corp.) and Endicott Apartment Hotel were not *so* classified *but were properly classifiable as such under the 1950 State Rent Control Law enacted in 1950.*

Commencing late in 1950 and continuing until early 1952, conferences were held between representatives of the smaller hotels in New York City and the State Rent Administrator and members of his staff. Under discussion was the fact that many of the smaller hotels—for various reasons not previously classified as hotels by the federal rent authorities—currently met the new statutory and regulation criteria for hotels and were therefore eligible for decontrol. As a result of these conferences a procedure was evolved whereby any hotel owner or operator claiming decontrol could present the necessary evidence of compliance with the requirements of the statute and relevant regulations. This evidence was thereafter acted upon by the local rent administrators and opinions or orders were issued either granting or denying hotel classification (R. 68-72; Ex. pp. 119, 120). Appellants West End Plaza Hotel (378 Realty Corp.) and Endicott Apartment Hotel, and others similarly situated, *e.g.*, Imperial Court Hotel, were among the establishments which applied for and received confirmation of their "hotel status", and the accompanying decontrol, in 1952 (R. 18, 80; 19, 88; 109-110).

Many owners and lessees of smaller hotel properties, in reliance upon their decontrolled status, made substantial capital investments in their premises (R. 79-80). Others, subsequently acquiring either fee or leasehold interests in these affected premises and also relying on the existing hotel classification and the attendant "decontrolled" status of the premises, parted with large sums of money as the cost of initial acquisition and thereafter further expended additional and substantial sums for improvements (R. 83-84; 93; 104-105; 109-110).

In 1959, the legislature amended Section 2(b) of the Emergency Housing Rent Control Law by adding the phrases "*Notwithstanding any previous order, finding, opinion or determination of the commission*" and "which on March 1, nineteen hundred and fifty was *and still is*" (R. 40).

Pursuant to these amendments, the State Rent Administrator further amended Section 3(7) of the rent and eviction regulations to accommodate the language of the regulations to that of the statute. In addition, and without warrant in the statute, the Administrator further qualified *his* definition of a hotel to provide that "*An establishment, not identified or classified as a 'hotel', 'transient hotel' or 'residential hotel' pursuant to the Federal Act shall be deemed to be commonly regarded in the community as a 'rooming house'*" (R. 41-42).

In 1961 the legislature again amended Section 2(b) of the Emergency Housing Rent Control Law, and for the first time *legislatively* created a "federad status" requirement by providing that the term hotel, as used in the Act, shall not include "*any establishment not identified or classified as a 'hotel', 'transient hotel' or 'residential hotel' pursuant to the federal act*" (R. 42).

In 1962, the legislature adopted the Local Emergency Housing Rent Control Act which authorized New York City to assume jurisdiction over rent control within its territorial limitations (R. 43).

Thereafter, the City of New York adopted Local Law No. 20 of the 1962 Local Laws of the City of New York (R. 44) which, insofar as it pertained to hotels, was a virtual repromulgation of the previously existing state law. In adopting regulations pursuant to the authority of the local statute, the defendants did likewise (R. 45. Compare with R. 41, 43).

Upon the assumption of rent control by New York City, the respondents, pursuing a predetermined course of in-

flexible action (R. 54-55), immediately commenced proceedings to effect the recontrol of many of the smaller hotels in the city. Where the hotel concerned enjoyed "federal status", recontrol was predicated upon alleged decreases in services (R. 83-86; 93). Where "federal status" was lacking, *and despite the fact that the respondents own inspections indicated that the establishments are, in every other respect, true residential hotels*, recontrol was predicated exclusively on that lack (R. 80-81; 88-89; 105-107; 109-111). The end result in either case, was recontrol.

The Questions Involved Are Substantial

This appeal presents to this Court for determination the fundamental question whether *property* rights are still within the protective ambit of the constitutional mandate, set forth in the Fourteenth Amendment to the United States Constitution, that no state shall "deprive any person of * * * property without due process of law." This question is directly posed by the New York Legislatures' enactment of a statute which bears upon such property rights.

The statute in question confiscates the valuable property rights previously enjoyed by some of the appellants, and others of the class they represent, by imposing, *retrospectively*, an unnecessary, unjustified, unreasonable and impossible condition which must be met on pain of summary divestiture of such rights.

Similarly, the statutes contain such inadequate and indefinite standards for the guidance of the administering agency, the courts and the public, that it is impossible for hotel owners and operators to ascertain the bases upon which they are about to be or have been deprived of their property rights by the Respondents purportedly doing that which the Legislature mandated should be done.

Moreover, and without any determination of the existence of a new emergency requiring and justifying such reimposition, the statutes in question—under the guise of the exercise of the police power—operate to reimpose rent control on hotel properties previously decontrolled for many years.

The first of these issues is presented by, and directly affects, the class of appellants denominated "opinion hotels". These establishments, admittedly not classified or identified as hotels of any type under the federal rent control laws, were, however, eligible to be classified as hotels *under the new criteria* established by the State legislature when it enacted the first Rent Acts in 1950 and 1951. And many, including the relevant appellants, were so classified—and hence decontrolled—by the State Rent Administrator.

These establishments, and there are many in the class, presented the facts concerning their eligibility for decontrol *under the state law*, and, when found so eligible by the rent authorities, were granted decontrol by "opinion" letters. But the letters were nothing more than administrative determinations of that to which the qualified establishments were entitled as a matter of law.

Although Respondents argued below that the State rent law did not effect a *substantive* change in the law of hotel rent-control as it then stood when the State took over in 1950, but merely continued to apply what had previously been federal law, *the fact is that it did*. As a critical analysis of the relevant statutes[6] clearly demonstrates, residential hotels were controlled when the state assumed jurisdiction over rent control on May 1, 1950. But residen-

[6] Housing and Rent Act of 1949 (R. 37); Emergency Housing Rent Control Law of 1950 (R. 37); Rent and Eviction Regulations § 3(10) eff. May 1, 1950 (R. 38) as approved by L. 1951, c. 443, § 2, eff. April 2, 1951; and Emergency Housing Rent Control Act of 1951 (R. 38).

tial hotels, under the Federal Act, were those commonly regarded in the community as hotels *on June 30, 1947*. Thus, it is obvious that under the Federal Act, which was in effect up through April 30, 1950, any residential hotel which first came into being as such *after* June 30, 1947 *could not qualify under the existing Federal Statute* as a residential hotel. The cut-off date for such Federal classification having passed, the condition precedent could not be met.

The State law chose to ignore the federal requirement for such classification and established its own date criterion, *i.e.*, March 1, 1950. And, since the state law stands alone, and not *in pari materia* with the federal act, *Hutchins* v. *McGoldrick*, 307 N. Y. 78 (1954), the Administrator was correct in interpreting the state statute to mean just what it said, *i.e.*, March 1, 1950 was the only date that *state* rent control was concerned with. See, *Bayron* opinion (Ex. pp. 121-127).

Stated very simply, the Federal Rent Law required that a hotel, to qualify as such, must have been commonly known as a hotel on June 30, 1947. *The State Rent Law changed this requirement to March 1, 1950.* Consequently, an establishment could properly and legally obtain hotel status from the State (as many did) by showing it was commonly regarded as a hotel on March 1, 1950 and rendering the customary hotel services. This is so although the establishment may not have qualified under the Federal Act since it did not have these essentials on June 30, 1947.

When, in 1961, the legislature required *for the first time* that a residential hotel which met the March 1, 1950 state test but not the June 30, 1947 federal test must also meet this latter test (*i.e.*, have been known, etc. under the federal act—the language of the 1961 amendment) in order to continue to enjoy previously acquired *statutory* decontrol, it established a new condition impossible for these establishments to meet. There being no rational relationship between the requirements of this new legislation and any

manifest evil to which it is intended that it be applied, *Allied Stores of Ohio* v. *Bowers*, 358 U. S. 522, 527 (1959), the summary deprivation of appellants' statutorily acquired property rights is clearly without due process of law, the legislation is unreasonable, arbitrary and confiscatory and manifestly unconstitutional. The City Act, insofar as here relevant, being a duplication of the State law, is likewise, unconstitutional.

The second issue, *i.e.*, the lack of constitutionally required standards in the relevant City and State statutes, is demonstrated by the affidavit of Irving S. Freedman, Esq. (R. 52-56) *which stands uncontradicted in the record*. See also the record of the appellant, Cambridge Hotel (R. 83-87; Ex. pp. 6-83). This property had unquestioned hotel status for twenty years, viz., the entire period of rent control. Yet, despite this, its hotel classification—and hence decontrolled status—was revoked because an inspector "was not impressed;" without the showing, by the Administrator, of any change in its operation or services.

Manifestly, the foregoing *ad hoc* determinations recur because the legislative bodies failed to provide, within their enactments, sufficient standards for the guidance of Respondents. As a consequence, it is impossible in any proceeding to determine either what is the will of the legislature or whether that will is being obeyed. *Bowles* v. *Willingham*, 321 U. S. 503, 515 (1944); *Yakus* v. *United States*, 321 U. S. 414, 424-426 (1944); *Schechter* v. *United States*, 295 U. S. 495 (1935); *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935), and dissenting opinion of *Cardozo J.*, *id.* at p. 434.

And the uncontradicted record in this case demonstrates the untrammeled manner in which the respondent Administrator, applying her own conceptualization of what the Legislature intended—not said; for, in failing to provide unequivocal standards or guideposts it said nothing—has unceasingly and arbitrarily proceeded against appellants'

properties, or rights therein, and "re-controlled" such properties even where there was complete compliance with what the statute *seemed* to say.

The affirmance by the New York Court of Appeals, without opinion, of the Special Term judgment of constitutional validity of the challenged amendments directly raises the serious question of whether the principles enunciated by this Court in *Bowles, Yakus, Schechter* and *Panama Refining* are still the law today and, if so, whether a state court, in construing state legislation in the light of the federal constitution, is bound to follow their holdings. Seemingly, this Court must re-enunciate the continued vitality of its prior determinations.

The irony of the present situation is that the New York City Rent and Rehabilitation Administration is currently proceeding under a provision of the local law the counterpart of which, in the State law, the Mayor of that very city saw fit to criticize for indefiniteness.[7]

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[7] At the Public Hearing of the Temporary State Commission on Rents and Rent Conditions held in Chancellor's Hall on March 2, 1961, Mr. Bernard J. Ruggieri appeared on behalf of the Mayor of the City of New York. He testified (Tr., 70-71):

"I would like to read the statement of the Mayor:"

"In connection with rooming houses, I want to say this:

"During the 1959 legislative session, Governor Rockefeller, Assemblyman Carlino, and the then Rent Administrator made bold promises to get at the rooming house and phoney hotel evils. Very little has been done to keep these promises. * * *.

"In connection with hotels, it is recommended that all hotels in New York City be reviewed so as to ascertain whether these 'hotels', given the privilege of gradual decontrol, are, in fact, hotels or rooming houses. In recent newspaper accounts of a few particularly high hotel rentals paid by the Department of Welfare, there was no mention of the fact that these buildings were decontrolled hotels. *While it is difficult to establish criteria to distinguish hotels from rooming houses, it is not impossible. Present criteria should be defined and every hotel structure should be reviewed to insure that it is, in fact, entitled to the privilege of decontrol.*" (Emphasis supplied.)

Finally, the New York Court of Appeals itself has held, and reaffirmed, that the constitutionality of rent control laws "rest[s] on the basis of the requirements of a great emergency", *Orinoco Realty Co.* v. *Bandler*, 233 N. Y. 24, 29 (1922), and they have no justification except in periods of such emergency, *Lincoln Building Associates* v. *Barr*, 1 N Y 2d 413, 420 (1956). While well established that all legislative enactments are clothed with a strong presumption of constitutionality, including a presumption of the existence of the necessary factual support for the provisions contained therein, *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, 209-210 (1934), it is equally well established that such a presumption remains rebuttable, *Borden's Co.* v. *Baldwin*, *supra*; that the Courts may scrutinize the basis of legislative enactments predicated upon the existence of a particular state of facts, *United States* v. *Carolene Products Co.*, 304 U. S. 144, 153 (1938); and that fundamental principles of due process demand that a law be not unreasonable or arbitrary and that it be reasonably related and applied to some actual and manifest evil, *Nebbia* v. *New York*, 291 U. S. 502 (1934). In addition, a legislative enactment predicated upon the police power, and seemingly valid when made, may be shown by later events, or later-discovered facts, to be arbitrary and confiscatory and, therefore, unconstitutional. *Abie State Bank* v. *Bryan*, 282 U. S. 765, 772 (1931).

Rent Control *per se* has been with New York State for the past twenty years. The continuation of this "emergency" legislation is bottomed upon legislative findings of the existence of an "acute shortage of dwellings" as an aftermath of the last war, and the need to continue controls to prevent "disruptive practices and abnormal conditions" which, in the legislative judgment, "will produce serious threats to the public health, safety and general welfare". L. 1946, c. 274, § 1, as amended, McK., *Unconsolidated Laws*, Vol. 65, part 3, § 8581; New York City Administrative Code, Title Y, § Y51-1.0.

Historically, however, hotel accommodations have made "the transition from regulation to a normal market of free bargaining between landlord and tenant"—the announced objective of both State and City policy, *id.*,—and for several years past have been largely freed from rent controls. And the ready availability of this type of accommodation is common knowledge.

In fact, as early as 1957, the State Commission to Study Rents and Rental Conditions submitted its report to the Legislature. (McKinney's 1957, *Session Laws of New York*, 1535 et seq.) In discussing the subject of the decontrol of luxury accommodations, and recommending the same, this Legislative Committee, expressing its informed judgment, rendered the opinion that "[t]he survey of the Administrator doubtless will indicate that there now exists an availability of housing accommodations in 'luxury' type apartments *and rooms in hotels* sufficient to make continued rent control in such accommodations unnecessary" (*Id.* at p. 1545) (emphasis supplied). The Commission's conclusion was, of course, factually correct and the *availability* of "rooms in hotels" has continuously increased, not decreased. *See*, the uncontradicted *Weingarten* affidavit (R. 74-78; Ex. p. 92) and *The Wall Street Journal*, Feb. 27, 1963, p. 1.

The foregoing is uncontradicted in the record in this case.

Whatever the rationale or motivation of the New York State Legislature in enacting the 1961 amendment to the Emergency Housing Rent Control Law, this record and the public record amply demonstrate the absence of any factual support for the challenged amendment to the State Law —adopted by the City of New York—*Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, 209-210 (1934), or any reasonable relationship between the amendment and the public purpose for which the statute, which it amends, was enacted, *Nebbia* v. *New York*, 291 U. S. 502, 525, 537 (1931).

Conclusion

This appeal raises a federal question of importance in terms of constitutional principle and the failure of the New York Court of Appeals to apply that principle in compliance with the injunction imposed by the Fourteenth Amendment to the United States Constitution. Moreover, the complex interrelationship between the several rent control statutes of the past two decades requires a plenary consideration of the issues involved herein, and the briefs and oral arguments of the parties concerned for proper resolution. Where appellants' property and property rights are confiscated under a statute which provides either no standards or inadequate standards for the guidance of the administering agency; where such enactment purports to be an exercise of the police power of the State and City of New York calculated to meet an emergency situation which does not, in fact, exist; and where, despite this, the highest Court of New York fails or refuses to accord appellants the benefits of constitutionally dictated due process of law, it remains for this Court, as the ultimate overseer of the federal Constitution and guarantor of the rights enumerated therein, to do so.

Respectfully submitted,

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Attorneys for Appellants.

APPENDIX A

Opinion of the New York County Supreme Court (May 2, 1963), Aurelio, *J.*

Defendants move pursuant to Rule 112 for judgment on the pleadings or in the alternative granting declaratory judgment in favor of the defendants pursuant to Rule 113. Plaintiffs cross move for summary judgment in their favor. The action is brought for a declaration that so much of Sections 2(b) of the Emergency Housing Rent Control Law of 1961 and 3(7) of the Rent and Eviction Regulations of the Temporary State Housing Rent Commission as adopted and in effect on April 30, 1962 were and are arbitrary and confiscatory and as such are unconstitutional and violative of the 14th Amendment of the United States Constitution and Article 1, Section 6 of the New York State Constitution; for a further declaration that Section Y 41-3.0 (e)(2)(c) of Local Law 20 of the Local Laws of the City of New York for 1962 and Section 3(d) of the Rent, Eviction and Rehabilitation Regulations were enacted without basis in fact in that there was adoption without question of pre-existing provisions of the State Rent Control Act of 1961 and the relevant Rent and Eviction Regulations promulgated by the Temporary Housing Rent Commission; and for further declaration that so much of Sections Y 41-3.0 (e)(2)(c) of Local Law 20 and 3(d) of the Rent, Eviction and Rehabilitation Regulations are unconstitutional in that they violate the provisions of the 14th Amendment of the United States Constitution and Article 1, Section 6 of the New York State Constitution; and finally for a judgment of permanent injunction. It is conceded that insofar as pertinent the local law and regulations adopted pursuant thereto are substantially the same as those which existed under the State jurisdiction and now under attack. Except for the constitutional question raised, plaintiffs' sole remedy is by Article 78 review.

The issue has been heretofore fully considered and adjudicated although the plaintiffs suspect that the prior adjudications are erroneous.

Opinion of the New York County Supreme Court (May 2, 1963), Aurelio, J.

In Hotel Armstrong, Inc. v. Temporary State Housing Rent Commission, 11 App. Div. 2d 395, plaintiffs sought a declaratory judgment that the Commission was without power to regulate rents charged by it, asserting that the 1959 amendments to the Rent Statute (L. 1959, ch. 695) were not applicable and that in any event the amendments were unconstitutional for lack of legislative standards to guide the exercise of administrative discretion. In 1949 the owner had been granted a certificate of occupancy as a hotel. The premises had not been subject to rent control under the Federal rent control statutes and it was conceded that its rents had never been under the regulation of the State Rent Commission. Plaintiff's purchase was made in February 1959 believing the premises to be exempt from rent control. Despite prior status the Rent Commission initiated proceedings to fix and enforce maximum rents in accordance with the 1959 amendments. It was concluded that the State Rent Control Act as amended in 1959 was applicable to housing accommodations such as those owned by the plaintiff despite the fact that it had been never theretofore under control at any time. The court stated:

> "In short, the amendments are applicable to housing accommodations 'styled as hotels which do not satisfy the definition of hotels in the statue, even though such housing accommodations have not been subject to rent control since 1950, and even though such accommodations were once properly classified as hotels but have since deteriorated into something less".

The State Rent Law, Section 2(2)[b], at that time provided that a hotel to win exclusion must qualify as a housing accommodation which

> "on March first, nineteen hundred fifty, was and still is commonly regarded as a hotel in the com-

munity in which it is located and which customarily provides hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service, * * *."

In that connection the court observed

"In order to qualify a hotel must have been a hotel on two dates: on March 1, 1950, and now. Plaintiff's premises, therefore, are not excluded from the statutory language unless they constitute a hotel now."

Section 4(2)(b) of the State Rent Law also provided as follows:

"Provision shall be made pursuant to regulations prescribed by the commission for the establishment, adjustment and modification of maximum rents in rooming houses, which shall include those housing accommodations subject to control pursuant to the provisions of paragraph (b) of subdivision two of section two of this act, having regard for any factors bearing on the equities involved, consistent with the purposes of this act to correct speculative, abnormal and unwarranted increases in rent."

Concerning those provisions the court concluded that it

"expressly confers upon the commission the power to fix maximum rents for hotels, 'pseudo' or 'decayed,' which it is empowered to regulate under the 1959 amendment to section 2 of the emergency law."

Opinion of the New York County Supreme Court (May 2, 1963), Aurelio, J.

That provision the court stated was placed in Section 4 of the Article 1 which also contains, immediately following subdivision 3, which provides as follows:

> "Whenever the foregoing standard is not susceptible of application to a housing accommodation to which this act applies, and for which no maximum rent was established on March first, nineteen hundred fifty, or where no registration statement had been filed as had been required by the federal act, the maximum rent thereof shall be fixed by the commission, having regard to the maximum rents for comparable housing accommodations or any other factors bearing on the equities involved, consistent with the purposes of this act."

The "foregoing standard" was held to be the maximum rents fixed under the Federal laws as of March 1, 1950 and it was held that

> "Consequently, if subdivisions 2-b and 3 are read together, there are sufficient legislative standards to guide the Rent Commission. Moreover, statutes are entitled to a presumption of validity and to a construction, if alternatively available, which will support constitutionality (Kauffman & Sons Saddlery Co. v. Miller, 298 N. Y. 38, 44; Matthews v. Matthews, 240 N. Y. 28, 34-35). Hence, the statute, if thus construed, may and should be sustained. Of course better draftsmanship would have avoided even the semblance of a question on this point. * * * True, the provision contains the disjunctive 'or' between the reference to the maximum rents for comparable accommodations and the equitable factors. Nevertheless, the subdivision is invulnerable to attack if it is read to require, as it should be, that the Rent Commission is required to consider maximum rents

Opinion of the New York County Supreme Court (May 2, 1963). Aurelio, J.

> for comparable housing accommodations in the first instance and that such comparable rents are only subject to adjustment by the other factors bearing on the equities involved."

The court also ruled with respect to the constitutionality of Section 36 of the regulations applicable to the fixing of maximum rents for the housing accommodations there involved. Section 36 of the regulations read in part as follows:

> "Where the Administrator finds that an establishment is no longer a hotel, he shall issue orders fixing maximum rents for the housing accommodations within such establishment which were not subject to rent control. The maximum rents so fixed shall be based upon the maximum rents for comparable housing accommodations taking into consideration all factors bearing upon the equities".

The regulation too was found to be constitutional.

Matter of Fabian Studios Inc. v. Herman, 25 Misc. 2d 752, affd 13 App. Div. 2d 943, was an application for review and annulment and involved an "opinion" hotel status. The opinion letter contained a statement that it was being issued upon the assumption of the accuracy of the claims therein contained for hotel status. The respondent there found that the facts did not warrant such status. There too a claim was made of considerable outlay for capital improvements and otherwise based upon the hotel status and that all services common to the operation of a hotel were furnished. Involved was Section 2(2)[b] of the State Rent Law as amended by the Laws of 1959, ch. 695. The court held that the essence of that statute

> "is that the establishment must have been commonly regarded as a hotel on March 1, 1950, must still be so

> regarded, and must furnish the customary hotel services above enumerated."

and that the respondent there had

> "the power to revoke a prior opinion issued by him."

Finally the court stated

> "I am not unmindful of or insensitive to the fact that petitioner made a substantial investment in the building, relying upon the status which it thought and had a right to believe the premises enjoyed. However, it brought about the situation which evokes its grievance by its alleged conduct with respect to the tenants who complained of and who proved to the Administrators' satisfaction, the lack of essential services."

Matter of Sylarn Realty Corp. v. Herman 25 Misc. 2d 814, affd 15 App. Div. 2d 637 also was application for review and annulment. It arose from a rent reduction proceeding brought on by tenants complaining of deteriorating services. The petitioner resisted the claim for reduction of rent on the ground that the building was a hotel on March 1, 1950 and as a result occupancies after December 2, 1949 were decontrolled. Maximum rents were not affected since petitioner restored the services demanded by the tenants prior to the commencement of the proceedings. The local Rent Administrator however, had ruled that the premises constituted a rooming house based on evidence in his records. That ruling was the basis of the Article 78 proceeding. There too the petitioner relied on Section 2(2) [b] of the State Rent Law as amended by the Laws of 1959 ch. 695. Petitioner contended that under the statute and upon proper proof the respondent was given the power to find the existence of a hotel status notwithstanding any previous action of the respondent. The petitioner con-

tended in addition, however, that the regulation adopted by the Administrator contravenes the statue and in particular with respect to that portion of the regulation which also provided that an establishment not identified as a hotel pursuant to the Federal act "should be deemed to be commonly regarded in the community as a rooming house." Section 4(4) [a] granted to the respondent the discretionary power to promulgate regulations deemed necessary to effectuate the purposes of the act and in pursuance thereof the Commission did issue subdivision 7 of Section 3 of the Regulations, which then read:

> "'Hotel.' Not withstanding any order, finding, opinion or determination made or issued by the Administrator at any time prior to June 30, 1959, any establishment which complies with the requirements for hotels of the public authorities having jurisdiction over such establishments, and which on March 1, 1950 was and still is commonly regarded as a hotel and in which at least an appreciable number of its occupants were and still are provided with customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service, or which services were and still are available with or without cost; provided, however, that the term 'hotel' shall not include any establishment which is commonly regarded in the community as a rooming house, irrespective whether such establishment provides some services customarily provided by hotels, or is represented to be a hotel, or both. An establishment not identified or classified as a 'hotel,' 'transient hotel,' or 'residential hotel' pursuant to the Federal Act shall be deemed to be 'commonly regarded in the community as a rooming house.'"

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The court there determined

> "Both the act and the regulations provide that an establishment which on March 1, 1950 was commonly regarded in the community as a hotel is decontrolled, except for tenants who occupied prior to December 2, 1949. The reference in the regulations to Federal status on March 1, 1950 is only a statement of the applicable law which must be applied in any event, and is inserted in the regulations for the benefit of the affected parties."

The court further found that

> "It appears that the regulations impose the identical standard as prescribed in the act and are in all respects valid. I reject the suggested construction which petitioner advances, and agree with respondent that such construction would frustrate the objective of the section which was enacted at the Administrator's express request."

Finally, Matter of Noxon Operating Corporation v. Herman, 32 Misc. 2d 557, affd. 16 App. Div. 774 [sic], also was an Article 78 proceeding brought to review a determination that the subject premises are

> "a well-run rooming house rather than a hotel within the statutory definitions."

However the petitioner raised a claimed constitutional question with respect to the amendment of the State Rent Act by the Laws of 1961 ch. 337 which clarified the definition of "hotel" so as to specifically exclude

> "any establishment not identified or classified as a 'hotel,' 'transient hotel' or 'residential hotel' pursuant to the federal act."

Opinion of the New York County Supreme Court (May 2, 1963), Aurelio, J.

It was determined that

> "It is of no import that respondent previously issued an opinion letter to petitioner characterizing its operation as a "hotel." Such letter was clearly based on the assumption of the accuracy of the statement of facts contained in petitioner's request for an opinion, and was subject to reversal after respondent undertook an investigation of the material facts. (Matter of Fablan Studious [sic] v. Herman, 25 Misc. 2d 752, affd. 13 A D 2d 943). * * * The 1961 amendment was obviously enacted to clarify existing law and made no substantive change in the emergency rent policies of the State. Even if it had, petitioner has presented no novel arguments to overcome the Legislature's right to exercise its police powers in what it deems an emergency situation. That petitioner may not in the future run its operations free from control is not a denial of due process."

In the light of the foregoing the conclusion is inescapable that the court is concluded by the prior adjudications and the declarations as sought by the plaintiff are without merit. However, the court reaches the conclusion also that the complaint in this action for a declaratory judgment ought not to be dismissed and accordingly the defendants' application for relief pursuant to Rule 113 is granted. Plaintiffs' cross-motion is denied. Settle order.

Dated: May 2, 1963.

T. A. A.,
J. S. C.

APPENDIX B

Order and Judgment of New York County Supreme Court

At a Special Term, Part I, of the Supreme Court of the State of New York, held in the County of New York, at the County Courthouse thereof, on the 6th day of May, 1963.

Present:

HON. THOMAS A. AURELIO,
Justice.

[SAME TITLE]

Defendants having moved by Order to Show Cause dated April 18, 1963 (1) pursuant to Rule 112 of the Rules of Civil Practice for judgment on the pleadings and, in the alternative, (2) pursuant to Rule 113 of the Rules of Civil Pratice for summary judgment adjudging and decreeing that certain specified portions of Sections 2(b) of the Emergency Housing Rent Control Law of 1961 and 3(7) of the Rent and Eviction Regulations of the Temporary State Housing Rent Commission, as adopted and in effect on April 30, 1962 and of Sections Y41-3.0(e)(2)(e) of Local Law 20 of the Local Laws of the City of New York for 1962 and 3(d) of the Rent, Eviction and Rehabilitation Regulations promulgated pursuant thereto are constitutional and valid;

And the plaintiffs, by Notice of Cross-Motion dated April 24, 1963 having moved this Court for an order pursuant to Rule 113 of the Rules of Civil Practice for summary judgment declaring the aforementioned Sections of the Emergency Housing Rent Control Law of 1961 and the Rent and Eviction Regulations of the Temporary State

Housing Rent Commission and of Local Law 20 of the Local Laws of the City of New York for 1962 and of the Rent, Eviction and Rehabilition Regulations promulgated pursuant thereto to be unconstitutional and invalid under both the Constitution of the State of New York and of the United States;

And the said motion and cross-motion having duly come on to be heard and having been argued to the Court on the 25th day of April, 1963; and the Court having heard the plaintiffs by Harris L. Present, Esq. and Freedman & Lilienthal, Esqs., attorneys for plaintiffs, by Harris L. Present, Esq. of counsel, and the defendants by Beatrice Shainswit, Esq., by Florence Zimmerman, Esq., of counsel;

Now, upon reading and filing the Order to Show Cause dated April 18, 1963 and the affidavit of Hon. Joseph Goldberg, sworn to the 18th day of April, 1963 and the exhibit annexed thereto; and the further affidavit of Hon. Joseph Goldberg, sworn to the 25th day of April, 1963 and the exhibits referred to therein and incorporated therein by reference, all submitted in support of defendants' aforementioned motions and in opposition to plaintiffs' cross-motion; and the plaintiffs' notice of cross-motion dated April 24, 1963; the affidavit of Irving S. Freedman, Esq., sworn to the 24th day of April, 1963; and filed papers consisting of the affidavits of Joseph Reinschreiber, Henry Horn, Abraham Shuman, Mark Halpern and Hugo Wolff, all sworn to the 15th day of February, 1963; Arthur J. Galligan, Esq., Des Gabor, Alex Olshansky, Harold Bardin and Harold Weingarten, all sworn to the 18th day of February, 1963; David Bisgeier and Irving S. Freedman, Esq., both sworn to the 14th day of March, 1963; and the exhibits annexed to the foregoing affidavits or referred to and incorporated therein by reference and separately filed with the Court on the argument of plaintiffs' motion for an injunction *pendente*

lite, all submitted in support of said cross-motion; and the pleadings herein;

And the Court having duly deliberated thereon and having filed its written decision herein on the 2nd day of May, 1963, it is

On motion of Beatrice Shainswit, Esq., attorney for defendants,

ORDERED, that plaintiffs' cross-motion for summary judgment and a declaration in their favor of the unconstitutionality and invalidity of the aforementioned Sections of the Emergency Housing Rent Control Law of 1961 and the Rent and Eviction Regulations of the Temporary State Housing Rent Commission and of Local Law 20 of the Local Laws of the City of New York for 1962 and of the Rent, Eviction and Rehabilitation Regulations be and the same hereby is denied; and it is further

ORDERED, that defendants' motion for judgment on the pleadings be and the same hereby is denied; and it is further

ORDERED, that defendants' alternative motion for a declaratory judgment in their favor be and the same hereby is granted in all respects; and it is further

ORDERED, ADJUDGED AND DECREED, that the relevant provisions of Sections 2(b) of the Emergency Housing Rent Control Law of 1961 and 3(7) of the Rent and Eviction Regulations of the Temporary State Housing Rent Commission and of Sections Y41-3.0(e)(2)(e) of Local Law 20 of the Local Laws of the City of New York for 1962 and 3(d) of the Rent, Eviction and Rehabilitation Regulations, as specified and particularized in Exhibit "A" annexed to the plaintiffs' complaint herein are valid and not in violation

of either the Constitution of the United States or the Co
stitution of the State of New York.

Enter,

T. A. A.,
J. S.

Dated May 7, 1963.

JAMES MCGUERRIN,
Clerk.

Filed: May 7, 1963,
New York County Clerk's Office.

APPENDIX C

1. Judgment of Court of Appeals

State of New York, ss:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 10th day of July in the year of our Lord one thousand nine hundred and sixty-three, before the Judges of said Court.

Witness,
The HON. CHARLES S. DESMOND,
Chief Judge, Presiding.

RAYMOND J. CANNON,
Clerk.

Remittitur, July 10, 1963.
Sup. Ct. No. 164

---

378 REALTY CORP., & ors. &c.,
Appellants,

vs.

NEW YORK CITY RENT AND REHABILITATION ADMINISTRATION & ano., &c.,
Respondents.

BE IT REMEMBERED, That on the 16th day of May in the year of our Lord one thousand nine hundred and sixty-three, 378 Realty Corp., & ors., &c., the appellants in this cause, came here unto the Court of Appeals, by Harris L. Present, and Freedman & Lilienthal, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Supreme Court, New York County. And New York City Rent and Rehabilitation Administration & ano., &c., the respondents in said cause, afterwards ap-

peared in said Court of Appeals by Beatrice Shainswit, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Harris L. Present, of counsel for the appellants, and by Florence R. Zimmerman, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said judgment be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justice thereof, &c.

RAYMOND J. CANNON,
Clerk of the Court of Appeals of the
State of New York.

Court of Appeals, Clerk's Office
Albany, July 10, 1963.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON,
Clerk.

SEAL

2. Decision of Court of Appeals Denying Reargument and Amending Remittitur

COURT OF APPEALS

October 3, 1963

Mo. No. 660

378 Realty Corp., et al.,

Appellants,

vs.

New York City Rent and Rehabilitation Administration, & ano.,

Respondents.

Motion for reargument denied, Motion to amend the remittitur granted; the return of the remittitur requested, and, when returned, it will be amended by adding thereto the following: Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States; as follows: Appellant contended that portions of Sec. 2(b) of the Emergency Housing Rent Control Law of 1961, Sec. 3(7) of the Rent and Eviction Regulations of the Temporary State Housing Rent Commission, Sec. Y 41-3.0(e) 2 CL.(c) of Local Law 20 of the City of New York for 1962, and Sec. 3(d) of the City Rent. Eviction and Rehabilitation Regulations constituted a denial and deprivation of his rights under the due process clause of the Fourteenth Amendment of the Constitution of the United States. The Court of Appeals held that there was no such denial or deprivation. (See 13 N Y 2d 817).

APPENDIX D

Statutes Involved

A. Section 2(b) of the New York State Emergency Housing Rent Control Law provides as follows:

> "2. "Housing Accommodation." Any building or structure, permanent or temporary, * * * except that it shall not include * * *
>
> "(b) notwithstanding any previous order, finding, opinion or determination of the commission, housing accommodations in any establishment which on March first, nineteen hundred fifty, was and still is commonly regarded as a hotel in the community in which it is located and which customarily provides hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service, provided, however, that the term hotel shall not include any establishment which is commonly regarded in the community as a rooming house, *nor shall it include any establishment not identified or classified as a "hotel", "transient hotel" or "residential hotel" pursuant to the federal act*, irrespective whether such establishment provides either some services customarily provided by hotels, or is represented to be a hotel, or both; and provided further that housing accommodations in hotels only within the cities of Buffalo and New York which have been and still are occupied by a tenant who has resided in such hotel continuously since December second, nineteen hundred forty-nine, so long as such tenant occupies the same, shall continue to remain subject to control under this act;" (Emphasis supplied. Italicized portion comprises material added by c. 337, L. 1961).

Statutes Involved

B. Section 3(7) of the New York State Rent and Eviction Regulations provides as follows:

> "(7) "Hotel." Notwithstanding any order, finding, opinion or determination made or issued by the Administrator at any time prior to June 30, 1959, any establishment which complies with the requirements for hotels of the public authorities having jurisdiction over such establishments, and which on March 1, 1950, was and still is commonly regarded as a hotel and in which at least an appreciable number of its occupants were and still are provided with customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service, or which services were and still are available with or without cost; provided, however, that the term "hotel" shall not include any establishment which is commonly regarded in the community as a rooming house, irrespective whether such establishment provides some services customarily provided by hotels, or is represented to be a hotel, or both. Any establishment not identified or classified as a "hotel," "transient hotel" or "residential hotel" pursuant to the Federal Act shall not be deemed to be a hotel." (As amended eff. June 30, 1961.)

C. Section Y51-3.0(e)(2)(c) of the New York City Rent and Rehabilitation Law provides as follows:

> "§Y51-3.0 Definitions.—
>
> * * *
>
> "2. The term "housing accommodation" shall not include: * * *

"(c) notwithstanding any previous order, finding, opinion or determination of the state rent commission, housing accommodations in any establishment which on March first, nineteen hundred fifty, was and still is commonly regarded as a hotel in the community in which it is located and which customarily provides hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service, provided, however, that the term "hotel" shall not include any establishment which is commonly regarded in the community as a rooming house, nor shall it include any establishment not identified or classified as a "hotel", "transient hotel" or "residential hotel" pursuant to the federal act, irrespective of whether such establishment either provides some services customarily provided by hotels, or is represented to be a hotel, or both; and provided further that housing accommodations in hotels which have been and still are occupied by a tenant who has resided in such hotel continuously since December second, nineteen hundred forty-nine, so long as such tenant occupies the same, shall continue to remain subject to control under this title;"

D. Section 3(d) of the New York City Rent, Eviction and Rehabilitation Regulations provides as follows:

"Section 3. Additional definitions. " " "

"d. "Hotel." Notwithstanding any order, finding, opinion or determination of the State Rent Commission, any establishment which on March 1, 1950 was and still is commonly regarded as a hotel in the City and which customarily provides hotel services

such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service, provided, however, that the term "hotel" shall not include any establishment which is commonly regarded in the City as a rooming house, nor shall it include any establishment not identified or classified as a "hotel", "transient hotel" or "residential hotel" pursuant to the Federal Act, irrespective of whether such establishment either provides some services customarily provided by hotels, or is represented to be a hotel, or both."

Office-Supreme Court, U.S.
FILED
MAR 17 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 845

378 REALTY CORP., 110TH ST. HOTEL CORP., TIMNAT ASSOCIATES, INC., PETER STUYVESANT 86TH CORP., SCHUYLER ASSOCIATES, VICTOR ASSOCIATES, INC., and ENDICOTT APARTMENT HOTEL, suing on behalf of themselves and all other owners, operators and lessees of hotels similarly situated in the City of New York,

Appellants,

v.

NEW YORK CITY RENT AND REHABILITATION ADMINISTRATION and HORTENSE W. GABEL, individually and as City Rent and Rehabilitation Administrator,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

BEATRICE SHAINSWIT,
Attorney for Appellees,
280 Broadway,
New York 7, New York.

FLORENCE R. ZIMMERMAN,
Of Counsel.

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

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I. L. F. Y. Co. v. Temporary State Housing Rent Commission, 10 N. Y. 2d 263 (1961), 219 N.Y.S. 2d 249; 369 U. S. 795 (1963), 82 S. Ct. 1155 .... 3, 14

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Rochester Transit Corp. v. Public Service Comm., 271 App. Div. 406, 66 N.Y.S. 2d 593; 296 N. Y. 1061 (1947) 16

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Sproles v. Binford, 286 U. S. 374 19

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New York City Rent and Rehabilitation Act, Local Law, #20, May 1, 1962 [New York City Administrative Code], § Y51-3.0, subd. (e)(2)(c), § Y51-5.0, subd. b(5)(2) 5, 18

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 845

378 REALTY CORP., 110TH ST. HOTEL CORP., TIMNAT ASSOCIATES, INC., PETER STUYVESANT 86TH CORP., SCHUYLER ASSOCIATES, VICTOR ASSOCIATES, INC., and ENDICOTT APARTMENT HOTEL, suing on behalf of themselves and all other owners, operators and lessees of hotels similarly situated in the City of New York,

Appellants,

v.

NEW YORK CITY RENT AND REHABILITATION ADMINISTRATION and HORTENSE W. GABEL, individually and as City Rent and Rehabilitation Administrator,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

The New York City Rent and Rehabilitation Administration moves, pursuant to Rule 16 of the Revised Rules of this Court, (a) to dismiss the appeal herein, taken from the final judgment of the New York Court of Appeals, on the ground that no substantial federal question of any kind has been raised, or (b) in the alternative, that the judgment appealed from be affirmed.

The Lack of Federal Substance in the Issues Presented

This appeal challenges provisions in the City Rent and Rehabilitation Act, copied verbatim—when rent control was transferred in 1962 to the City by the State—from provisions of the State Rent Act as amended in 1959 and 1961. Those provisions were designed to cope with abuse and evasion of the rent control law by landlords of properties which were in fact rent controlled, but which had masqueraded under self-styled, self-assumed status of "decontrolled hotels" in order to collect decontrolled rents.

More specifically, the Legislature aimed at correcting the following categories of abuse:

(1) Properties which had always been rent controlled—"pseudo" hotels, "purported" hotels, "phoney" hotels—which never actually were anything but controlled housing within the meaning of the rent law, but which were self-styled as "decontrolled hotels" or "exempt hotels" to escape rent control. For the most part, these "pseudo" hotels (many, old law tenement houses) were controlled apartment buildings in every sense, under federal and state rent control, whose individual apartments had been converted to single room occupancy. It was primarily this type of building which was invoived in repeated reports by the New York City Welfare Department that it was forced to pay exorbitant rents, for recipients of public welfare, for a dilapidated slum room occupied by an entire family. These owners represented the establishments as "decontrolled hotels" and thereby claimed the right to freedom from all controls. The fact was that these properties not only completely lacked the indicia and services provided by true hotels, but had never been hotels on the determinative statutory date, March 1, 1950 (see *infra* p. 6). Some of these establishments even fortified themselves with "opinion" letters of decontrol, obtained by misstatement of material facts to the then rent agency.

(2) Properties which were originally not controlled—these really had been exempt hotels—which had decayed, by ceasing their base date operation as hotels or eliminating their known base date services, and had deteriorated into rooming houses or worse, in any event controlled housing.

To meet the problem of evasion of rent controls posed by these two groups (a problem primarily affecting the very poorest tenants in New York City, those least able to protect themselves), the State Legislature, and subsequently the New York City Council, enacted legislation expressly spelling out the power of the rent agency (a) to review the control status of a particular establishment under the rent law on the admitted statutory base date and (b) to make a factual determination wiping out any masquerade of decontrol. Since these provisions have been in the State and City laws for the past four years, they have been the subject of much administrative action, first by the State Rent Administrator and then by the City Rent and Rehabilitation Administration. Moreover, they have repeatedly been reviewed by the courts and upheld. The instant appeal, attacking not any one of these rulings but the right of the Legislature to enact legislation dealing with this evil, seems to us barred by the most elementary principles of constitutional law.

Rent control itself, as an exercise of the federal war power or the state police power, has of course long since been held to be constitutional, and is not here challenged. *Bowles* v. *Willingham*, 321 U. S. 503 (1944). *Teeval Co., Inc.* v. *Stern*, 301 N. Y. 346 (1950), certiorari denied 340 U. S. 876, 71 S. Ct. 122; *I.L.F.Y. Co.* v. *Temp. St. Hous. Rent Comm.*, 10 N. Y. 2d 263 (1961), 219 N.Y.S. 2d 249, appeal dismissed 369 U. S. 795 (1963), 782 S. Ct. 1155.

This appeal presents no substantial federal question of any kind. Indeed, the attacked provisions fall completely within the special competence of the Legislature to estab-

lish statutory procedures reasonably adapted to a recognized and undisputed public need. This Court has repeatedly dismissed or denied certiorari in substantially identical circumstances. This appeal, too, should be dismissed or, in the alternative, the judgment below should be affirmed. *Four Maple Drive Realty Corp.* v. *Abrams*, 2 N. Y. 2d 837, 355 U. S. 14 (1957), 78 S. Ct. 22; *Patterson* v. *Stanolind*, 305 U. S. 376, 379 (1938); *Levering and Garrigues Co.* v. *Morrin*, 289 U. S. 103, 105, 106 (1933); *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 577 (1945), 326 U. S. 697, 66 S. Ct. 493.

We note that the Jurisdictional Statement as well as the record, prepared by appellants in this declaratory judgment action, contain self-serving claims and extracts of parts of incomplete administrative proceedings which are pending determination in the City rent agency. These materials are not properly here, since this is not an appeal to review the facts in such incomplete, pending administrative proceedings. Indeed appellants fully admitted below (fol. 180): "It is not the intention here—as indeed it could not properly be—to collaterally consider the actions of the defendants in regard to the premises."

Counter-Statement of "Questions Presented"

The only question presented by this appeal is whether the challenged amendments, enacted to aid in enforcement of the rent control law and to correct abuse thereof, bear a reasonable relation to the exercise of a concededly lawful purpose and to the evils which the Legislature sought to combat.

The Statute Involved

All pre-1947 housing accommodations (including hotels) are controlled, and are set forth in the rent statute. The statute also lists accommodations which are not controlled,

including certain hotel accommodations. It was the latter provision under which the abuses referred to hereinabove arose and which was accordingly amended by the State in 1959 and 1961 to clarify the situation [New York State Emergency Housing Rent Control Law, ch. 695, Laws 1959, sec. 2, subd. 2(b), ch. 337, Laws 1961, sec. 2, subd. 2(b)], in the language subsequently incorporated verbatim into the New York City Rent and Rehabilitation Act [New York City Administrative Code, sec. Y51-3.0, subd. (e)(2)(e)]. That provision is the one now before this Court, and appellants specifically challenge only the italicized portions of the following statutory definition:

> "The term 'housing accommodation' shall not include:
>
> * * *
>
> (e) *Notwithstanding any previous order, finding, opinion or determination of the commission*, housing accommodations in any establishment which on March 1, 1950, was *and still is* commonly regarded as a hotel in the community in which it is located and which customarily provides hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service, provided, however, that the term hotel shall not include any establishment which is commonly regarded in the community as a rooming house; *nor shall it include any establishment not identified or classified as a 'hotel', 'transient hotel' or 'residential hotel' pursuant to the federal act*, irrespective of whether such establishment provides either some services customarily provided by hotels, or is represented to be a hotel, or both; * * *"

Statutory Background

All of rent control, since its inception by the federal government in November, 1943, is necessarily anchored to

a statutory base date, which is the gauge for determining a property's rent control status, amount of maximum rent, and essential services. Appellants admit the controlling base date for evaluating status of these establishments is *March* 1, 1950 (two months before the end of federal rent control). State rent control went into effect on *May* 1, 1950, and continued rent control of whatever had been subject to federal rent control on the preceding March 1, 1950. (In like fashion, the City rent law, effective May 1, 1962, continued rent control of all properties which were controlled by the State rent act on the preceding April 30, 1962, and no decontrol windfall—of the kind here demanded—resulted from that transfer.) The highest court of New York State has ruled that federal classifications, determinations, and federal rent agency orders of all kinds, in effect on March 1, 1950, were binding on the new State rent agency, as a matter of law, when the State rent law went into effect on May 1, 1950. *Proche* v. *McGoldrick*, 307 N. Y. 760 (1954).

The hotel provision here challenged (quoted *supra*, p. 5), decontrolling only those establishments which on March 1, 1950—two months before the end of federal rent control—were hotels and provided specified hotel services, ties in directly with this general statutory scheme. Thus, unless an establishment had been decontrolled by the federal government prior to March 1, 1950, neither its subsequent masquerade as decontrolled, its present physical appearance, nor rendition today of hotel services can fill that statutory jurisdictional omission. It is their refusal to recognize that crucial fact that brings appellants to this Court.

The history of the Federal and State (and now City) rent acts reveals a continuity and a parallelism of purpose and procedure in the treatment of hotels. As a matter of fact, the definition of "hotel" in the new State rent law was the same as the definition in the pre-existing Federal

statute. New York State, in enacting its rent control law, was not creating any new pattern of rent control as regards types of accommodations. It was merely taking over from the Federal government those accommodations which had theretofore been subject to rent control under Federal law—precisely as New York City now controls what was subject to the State rent law. In other words, insofar as hotels are concerned, the Legislature did not attempt any new definition or formula of what constitutes a hotel.

In order to show that the State rent law continued control over those accommodations which were subject to Federal rent control on the admitted base date of March 1, 1950, and that this appeal is nothing more than an attempt to perpetuate a post-base date masquerade of decontrol, it is necessary to review, briefly, Federal and State rent control as regards this class of accommodations even though it regrettably adds to the length of this motion:

Federal Rent Control—1943

Control of rents of hotels in New York City was initiated by the Federal government on November 1, 1943. Although the Office of Price Administration issued separate Regulations (New York Area) for rooming houses and hotels, as distinguished from housing generally, nevertheless the rents of all housing accommodations and of all hotels (transient and residential) were controlled.

The Housing and Rent Act of 1947 (Public Law No. 129, 80th Congress, First Session, Sec. 202(c)) provided for decontrol of the rents of almost all hotel accommodations, but kept under control those not providing specified customary hotel services. (In July, 1947, New York City passed a local law which protected permanent tenants decontrolled under the Federal law from rent increases, i.e., tenants in occupancy at least 90 days prior to July, 1947.)

Federal Rent Control—1949

Effective April 1, 1949, the Federal government (Housing and Rent Act of 1949, Public Law No. 31, 81st Congress, First Session) *recontrolled* hotel accommodations in New York City by repealing the foregoing 1947 exemption (sec. 202-c) and *by substituting in its stead* (sec. 202(c)(1)(B)) *this limited exemption from rent control:* "The term 'controlled housing accommodations' means housing accommodations in any defense rental area, *except that it does not include:*" (a) rooms in transient hotels, i.e., 75% or more transient occupancy on March 1, 1949 (or if the hotel was not such a transient hotel, hotel rooms rented for transient occupancy-daily basis to a tenant who lived there less than 90 days on March 1, 1949), and (b) a hotel was defined as an establishment which on June 30, 1947 was commonly known as a hotel in the community and was occupied by an appreciable number of persons who were provided with customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

Thus, after the Housing and Rent Act of 1949, only transient hotel accommodations which met the above requirements, remained decontrolled. On the other hand, apartment buildings, rooming houses, residence clubs (consistently defined—as at present—by the Federal regulations as rooming houses) and other establishments which did not meet the foregoing hotel definition (or, like many of these establishments, had affirmatively been denied decontrol)—*all remained subject to Federal rent control.*

State Rent Control—1950

In recommending enactment of the State Rent Law, Governor Dewey stated (1950, Legis. Doc. No. 39):

> "Permanent residential accommodations in hotels were decontrolled in 1947 and re-controlled in New York City by Federal action in 1949 * * *

"Accordingly, I recommend * * * that legislation be enacted * * * providing for State control of residential rents *in all areas now subject to Federal or City control.*" (Italics ours)

Section 14, subd. 1 of the State Rent Law (Ch. 250, L. 1950) clearly expressed this purpose:

"Sec. 14. Intent. 1. *It is the intention of this act to subject to control only those housing accommodations, as that term is defined herein, which were subject to rent control and for which a maximum rent was in effect on March 1, 1950, pursuant to federal or local laws*, and in the discretion of the commission those housing accommodations for which a maximum rent was thereafter established, pursuant to the provisions of Sec. 4 hereof." (Italics ours)

The Legislature re-enacted the foregoing Sec. 14, without change, every two years throughout State rent control (Cf. ch. 337, L. 1961, Sec. 14). Appellants admit the said March 1, 1950 base date is applicable to the following definitions which, like the preceding federal law, provided that only the following hotel accommodations were not controlled (ch. 250, L. 1950, Sec. 2, subd. 2(b)):

"transient housing accommodations in any establishment commonly regarding as a hotel in the community in which it is located: the term 'transient housing accommodations' shall mean accommodations rented on a daily basis to a tenant who is provided customarily with hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service and who had not on March 1, 1950 continuously resided in the hotel for 90 days or more."

After a year of operation, the statutory exemption was enlarged to provide that the following only was not controlled (Ch. 443, Laws 1951, Sec. 2, subd. 2(b), 1951 McKinney's Session Laws of New York, p. 562):

> "Housing accommodations in any establishment commonly regarded as a hotel in the community in which it is located and which customarily provides hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; provided, however, that it shall include housing accommodations in hotels within * * * the cities of * * * New York which have been and still are occupied by a tenant who has resided in such hotel continuously since December 2, 1949, so long as such tenant occupies the same;"

Section 3(10) of the State Rent and Eviction Regulations, effective May 1, 1950, which mirrored the said March 1, 1950 test date for hotels, was validated and confirmed by the State rent law (ch. 443, L. 1951, sec. 17, subd. 2, 1951 McKinney's Session Laws of New York, p. 579).

State Rent Control—1959

The challenged 1959 amendment (now copied into the City Rent Law) was recommended by Governor Rockefeller in a special message to the Legislature on February 9, 1959 (1959 McKinney's Session Laws of New York, p. 1703), where he stated:

> "The State Rent Administrator will present to the Legislature at the public hearings to be held shortly by the Temporary State Commission on Rents and Rental Conditions * * * recommendations to strengthen the present law. These recommendations will include control of certain rooming houses which have evaded

rent regulation * * * I urge the Legislature to adopt these recommended changes in the law."

In making its recommendations to the Legislature, the New York State Commission to Study Rents and Rental Conditions stated in pertinent part (1959 McKinney's Session Laws of New York, p. 1835):

"Recommended Amendments to the Residential Rent Control Law

"Evidence before the Commission prompts it to recommend to the Legislature for enactment * * *

"Recontrol of Pseudo 'Hotels': Will void the opinions of the Rent Commission decontrolling accommodations in certain establishments, which, to escape rent control, began (usually after the year 1950) to represent themselves as 'hotels'. Although these establishments frequently furnish some services customarily provided by true hotels, they were commonly regarded in the community as rooming houses or residence clubs. Specific recontrol of such accommodations is authorized 'notwithstanding any previous order, finding, opinion or determination', that such accommodations were hotels.

"In order to qualify as a hotel for decontrol purposes, the amendment provides that the establishment must have been commonly regarded as a hotel on March 1, 1950 in the community where it is located and still is so regarded.

"This amendment will also vest in the Commission the additional power to recontrol former establishments that qualified as hotels which are currently not providing services customarily provided in hotels and have degenerated into rooming houses or worse. The restrictive definition of the term 'hotel' will make it unnecessary for the Commission to review any prior determination."

In other words, once the abuse of the "pseudo" hotels, with or without "opinion" letters, and of the "decayed" hotels, had become sufficiently widespread to be recognized, it was not difficult to detect or to remedy, and these clarificatory amendments, which are challenged here, were enacted:

1. In 1959: to remedy a masquerade as a hotel after the admitted statutory base date of March 1, 1950 whereby controlled rooming houses, residence clubs and other establishments had submitted misstatements of material facts to the then State rent agency and had obtained thereby "opinion letters" of decontrol, the new law stated the obvious, namely, that the rent agency would make a factual determination of what the establishment was under the rent law on the statutory base date and could revoke any such "opinions" of decontrol where misstatement of material facts had been practiced on it, "notwithstanding any previous order, finding, opinion or determination of the commission" (ch. 695, Laws of 1959, sec. 2, subd. 2(b), 1959 McKinney's Session Laws of New York, p. 936).

2. In 1959: to remedy the problem of the post-base date masquerade as a "hotel", and to remedy the problem of the "decayed" hotel, the rent law definition was amplified to make plain the obvious requirement that the establishment "was and still is" a hotel (ch. 695, Laws of 1959, sec. 2, subd. 2(b), 1959 McKinney's Session Laws of New York, p. 936).

3. In 1961: further to remedy a masquerade as a hotel after the 1950 statutory base date, by stating the now well settled principle of law, for the benefit of affected parties, that whatever an establishment was under the (Federal) rent law on the base date of March 1, 1950 was binding on the State rent agency, as well as on such establishments, i.e., that the term hotel does not include "any estab-

lishment not identified or classified as a 'hotel', 'transient hotel' or 'residential hotel' pursuant to the federal act" (ch. 337, Laws of 1961, sec. 2, subd. 2(b), 1961 McKinney's Session Laws of New York, p. 489).

City Rent Law—1962

Under the Home Rule provisions of the New York Constitution, jurisdiction over rent control in New York City (cities with a population over one million) was transferred from State to City administration on May 1, 1962, with specific power in the City to copy or to change, in whole or in part, the predecessor State rent law pattern (ch. 21, Laws 1962, Sec. 12). *I.L.F.Y. Co.* v. *City Rent and Rehabilitation Administration*, 11 N. Y. 2d 480 (1962), 230 N.Y.S. 2d 986; *Hartley Holding Co.* v. *City Rent and Rehabilitation Administration*, —— N. Y. 2d —— Dec., 1963).

As the challenged hotel provisions had only recently been the subject of extended review and amendment, they were copied verbatim into the City rent law. The Report of the New York City Council's Committee on General Welfare, which introduced the rent control bill, stated (p. 4) that where no change is needed, the language of the predecessor State rent law was being retained in order to provide "a large body of judicial and administrative precedent, extremely useful for interpreting and carrying forward the essential concepts of rent control." This Report also stated (p. 6):

> "The hard core of the slum evil exists in the City's rooming house and single room occupancy accommodations. As a class, these accommodations harbor the most exploited of our tenants who are prey to every form of housing racket. In some cases, rooming house rents have attained levels out of proportion to the space and services provided * * *"

ARGUMENT

Since the challenged amendments patently constitute a reasonable exercise of the police power, this appeal presents no substantial federal question.

Appellants do not dispute the continuance of the housing emergency, which is the predicate for these housing rent control laws. *Bowles* v. *Willingham*, *supra*, 321 U. S. 503, 517 (1944); *Teeval Co.* v. *Stern*, *supra*, 301 N. Y. 346, 362, certiorari denied 340 U. S. 876, 71 S. Ct. 122; *I.L.F.Y. Co.* v. *Temp. St. Hous. Rent Comm.*, *supra*, 10 N. Y. 2d 263 (1961), 219 N.Y.S. 2d 249, appeal dismissed 369 U. S. 795 (1963), 82 S. Ct. 1155.

The evils which the Legislature sought to correct are so well known that they are even set forth in appellants' Jurisdictional Statement at page 16, footnote 6. Each of the challenged provisions has been repeatedly reviewed and upheld:

A. "Pseudo" Hotels

All of the Registration Statements, initially filed in 1943 with the Office of Price Administration, meticulously kept up to date with entries of all proceedings, reports, orders, etc., as to status, rent increases, decreases, services; plus all of the files intact, such as applications resulting in final orders, all lease and decontrol reports, and all manner of documentation, were turned over intact to the new State Rent Commission by the then Office of Housing Expediter in 1950—just as they have now all been turned over intact to the City rent agency. Therefore, regardless of whether an establishment *today* states it was a hotel on the admitted base date of March 1, 1950, reference to those extensive federal files clearly reveals what the establishment was under the then federal rent law on that base date.

Even though all orders, classifications and rulings of the federal rent agency, in effect on March 1, 1950, were bind-

ing on the State Rent Commission, as a matter of law, *Proche* v. *McGoldrick*, 307 N. Y. 760 (1954), appellants have persisted in asserting they are being deprived of their constitutional rights where the amendments simply required them to show what they were under the then federal rent law on that admitted base date of March 1, 1950.

The New York courts have repeatedly reviewed and upheld the Administrator's factual determination that a post-base date masquerade as a decontrolled hotel was ineffective to escape rent control. Typical was *Sularn Realty Corp.* v. *Herman*, 25 Misc. 2d 814, 205 N.Y.S. 2d 220, unan. aff'd 15 A. D. 2d 637 (Appellate Division, First Dept., 1962), 223 N.Y.S. 2d 854. It was there held that reference to the Federal status on March 1, 1950 is only a statement of the applicable law which must be applied in any event and was inserted for the prior knowledge of affected parties; that the statutory clarifications here challenged only made the existing test for hotel decontrol more readily understandable; and that the amendments in no manner changed the sec. 14 intent clause of the Act to continue rent control of those accommodations which were subject to rent control under the federal law on March 1, 1950. See also, *Matter of Fabian Studios, Inc. (Herman)*, 25 Misc. 2d 752, 201 N.Y.S. 2d 553, unan. aff'd 13 A. D. 2d 943 (First Dept., 1961), 218 N.Y.S. 2d 591; *Noxon Operating Corp.* v. *Herman*, 32 Misc. 2d 557, 223 N.Y.S. 2d 998, unan. aff'd 16 A. D. 2d 774 (First Dept., 1962), 228 N.Y.S. 2d 462, unan. aff'd 13 N. Y. 2d 604 (1963), 240 N.Y.S. 2d 361; *378 Realty Corp.* v. *New York City Rent & Rehab. Admin.*, 39 Misc. 2d 30, 240 N.Y.S. 2d 58, unan. aff'd 13 N. Y. 2d 817 (1963), 242 N.Y.S. 2d 347, reargument denied 13 N. Y. 2d 902, 243 N.Y.S. 2d 685 (1963).

B. "Pseudo" Hotels with "Opinion" Letters

The courts have ruled that "pseudo" hotels (i.e., controlled rooming houses masquerading as decontrolled),

which obtained "opinion" letters of decontrol by misstating what they were under the federal law on March 1, 1950, are not deprived of any rights where such an "opinion" letter is revoked, as any such "rights" was improperly acquired by misstatement of material facts and failure to disclose their rent control status on the admitted base date of March 1, 1950.

These "opinion" letters all contained two important caveats: first, they stated they were being issued upon an assumption of the accuracy of facts recited in the applicants' request for a letter opinion; secondly, they stated they were issued pursuant to sec. 117(2) of the Rent Regulations, which stated that an opinion or official interpretation would remain in full force and effect unless and until revoked or modified by the official issuing it or by the Administrator.

Certainly an administrative agency, charged with the protection of the public interest, is not precluded from making a factual determination and revoking a *conditional* opinion upon discovery of misstatement to it of material facts. *225 East 70th Street* v. *Weaver*, 6 N. Y. 2d 197 (1959), 489 N.Y.S. 2d 153; *Rochester Transit Corp.* v. *Public Service Comm.*, 271 App. Div. 406, 66 N.Y.S. 2d 593, leave to appeal denied by the Court of Appeals 296 N. Y. 1061 (1947).

In *Matter of Noxon Operating Corp.* v. *Herman*, *supra*, 32 Misc. 2d 557, 223 N.Y.S. 2d 998, aff'd 16 A. D. 2d 774 (First Dept., 1962), 228 N.Y.S. 2d 462, unan. aff'd 13 N. Y. 2d 604, 240 N.Y.S. 2d 361, it was said (at 32 Misc. 2d 557):

> "* * * Such letter was clearly based on the assumption of the accuracy of the statement of facts contained in petitioner's request for an opinion, and was subject to reversal after respondent undertook an investigation of the material facts. Matter of Fablan Studios, Inc. v. Herman, 25 Misc. 2d 752, aff'd 13 A. D. 2d 943 * * *"

The Court in the *Noxon* case further stated (32 Misc. 2d 557) that "* * * the 1961 amendment was obviously enacted to clarify existing law and made no substantive change in the emergency rent policies of the State. Even if it had, petitioner has presented no novel arguments to overcome the Legislature's rights to exercise its police powers in what it deems an emergency situation." To the same effect, see *378 Realty Corp. v. New York City Rent & Rehab. Admin., supra*, 39 Misc. 2d 30, 240 N.Y.S. 2d 58, unan. aff'd 13 N. Y. 2d 817, 242 N.Y.S. 2d 347, reargument denied 13 N. Y. 2d 902, 243 N.Y.S. 2d 685 (1963).

In other words, the challenged amendments made clear the power of the administrative agency to make a factual determination revoking a masquerade by a "pseudo" hotel, whether or not it was fortified by an "opinion" letter of decontrol, where a careful analysis clearly revealed what the establishment was under the federal rent law on the admitted statutory base date of March 1, 1950.

C. "Decayed" Hotels

All housing accommodations, and the definition thereof includes hotels, are controlled housing unless specifically exempt or decontrolled.

The statute, which defines those particular hotels which are not controlled, also recites customary hotel services. Moreover, a particular hotel's base date essential services are known from the extensive files and documentation—including Registration Statements, reports, decontrol proceedings, applications, schedules—filed with the then rent agency by their landlords, over the years. Obviously, the data on file is different as to each establishment. The rent statute has consistently empowered the rent agency to exercise its broad discretionary powers to assure the maintenance of essential services furnished on the maximum rent date (Cf. State rent law, ch. 250, L. 1950, Sec. 4, subd.

3(b); ch. 337, L. 1961, Sec. 4, subd. 4 (5)(b); New York City rent law, Admin. Code, Sec. Y51-5.0, subd. b(5)(2)).

The courts have ruled that even without the challenged amendment, the rent agency had the inherent power to exercise control over "purported" hotels that have ceased to provide the customary hotel services which they provided on the base date and have ceased to function as a hotel, i.e., "decayed" hotels. In *Bayview Hotel, Inc.* v. *Herman*, 12 N. Y. 2d 423 (1963), 240 N.Y.S. 2d 585, the highest court of this State upheld the Administrator's factual determination that a shabby rooming house which called itself a decontrolled hotel, was not decontrolled within the meaning of the rent law. The Court of Appeals stated that when the State took over rent control from the federal government in 1950, there were four categories of housing accommodations which were not covered by the State law, three of which (unlike the case at bar) were absolutely free from rent control, regardless of their status or use. The Court went on to describe the fourth category, involved in this challenge to the "decayed" hotel, and stated (Burke, J. at p. 427):

> "We are here concerned with housing accommodations in the fourth category which are allegedly exempt because of their status * * *. However this exemption prevailed only so long as the housing accommodations retained that status entitling them to be exempt. When housing accommodations exempt solely because of their hotel status can no longer qualify for that status, there is nothing in the Rent Control Law which permits a continued exemption (citing)."

The Court of Appeals further stated that the establishment had lost its exemption as a hotel and was subject to rent control when it commenced operations as a rooming house, and amendment of the rent law in 1959 "was not necessary to subject these housing accommodations to rent

control, that came about by operation of law upon the termination of the former exempt status". Also see: *Hotel Armstrong* v. *Temp. St. Hous. Rent Comm.*, 11 A. D. 2d 395 (Appellate Division, First Dept., 1960), 207 N.Y.S. 2d 358; *378 Realty Corp.* v. *New York City Rent & Rehab. Admin.*, 39 Misc. 2d 30, 240 N.Y.S. 2d 58, unan. aff'd 13 N. Y. 2d 817, 242 N.Y.S. 2d 347 (1963), rearg. den. 13 N. Y. 2d 902, 243 N.Y.S. 2d 685.

D. No Substantial Federal Question

The challenged provisions of the City rent law have as their background: legislative review, as well as extensive public discussion of the entire rent law, every two years for the past 13 years; legislative concern over the serious social and economic problems of a) the masquerade by controlled housing accommodations as "decontrolled hotels", with or without an "opinion" letter of decontrol, and b) the "decayed" hotel; attempts over an extended period of time to deal effectively with these problems, finally culminating in the 1959 and 1961 amendments to the statute; and their re-enactment without change by the City Council in 1962 because these recent comprehensive amendments made further legislative change unnecessary, and in order that "judicial and administrative precedent" be retained.

The principles by which to test the constitutionality of a statute resting on the police power have been asserted over and over again. A legislative enactment carries with it a strong presumption of constitutionality, i.e., it is presumed to be supported by facts known to the Legislature. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152; *South Carolina Highway Department* v. *Barnwell*, 303 U. S. 177, 191; *Sproles* v. *Binford*, 286 U. S. 374, 388. The courts may not be concerned with questions as to the reasonableness, wisdom, propriety, or desirability of such a statute; nor may they substitute their judgment for that of the

legislative body so long as there can be discovered "any state of facts either known or which could reasonably be assumed" to afford support for the legislative decision to act. *United States* v. *Carolene Products Co., supra,* 304 U. S. 144, 154; *East New York Savings Bank* v. *Hahn,* 326 U. S. 230, 234; *South Carolina Highway Department* v. *Barnwell Bros., supra,* 303 U. S. 177, 191; *Bordens Farm Products Co.* v. *Ten Eyck,* 297 U. S. 251, 263.

In *East New York Savings Bank* v. *Hahn, supra,* a constitutional challenge against the mortgage moratorium originally enacted in 1933 and extended by the State Legislature in 1943, this Court stated:

> "Appellant asks us to reject the judgment of the joint legislative committee, of the Governor, and of the legislature, that the public welfare, in the circumstances of New York conditions, requires the suspension of mortage foreclosure for another year. On the basis of expert opinion, documentary evidence, and economic arguments of which we are to take judicial notice, it urges such a change in economic and financial affairs in New York as to deprive of all justification the determination of New York's legislature of what New York's welfare requires. We are invited to assess not only the range and incidence of what are claimed to be determining economic conditions insofar as they affect the mortgage market * * * but also to resolve controversy as to the causes and continuity of such improvements, namely the effect of the war and its termination, and similar matters. Merely to enumerate the elements that have to be considered shows that the place for determining their weight and significance is the legislature and not the judiciary * * *."

The courts have uniformly and consistently held that the judicial function in testing statutory constitutionality is limited to the inquiry of whether there is any rational

basis upon which the Legislature could have made the challenged classification.

The rent control classification as to "hotels" and "rooming houses", carried over from federal rent control, has been held to be valid. *Matter of Hotel Association of New York City* v. *Weaver*, 3 N. Y. 2d 214, 165 N.Y.S. 2d 17 (1957). As was said in *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583, 594:

> "The determination of the legislature is presumed to be supported by facts known to it, unless facts judicially known or proved preclude that possibility (Standard Oil Co. v. Marysville, 279 U. S. 582, 584; Borden's Farm Products Co. v. Ten Eyck, 297 U. S. 251, 263; South Carolina Highway Department v. Barnwell Bros., 303 U. S. 177, 191-192; United States v. Carolene Products Co., 304 U. S. 144, 153-4). Hence, in passing on the validity of the present classification, it is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided. Its function is only to determine whether it is possible to say that the legislative decision is without rational basis."

Finally, we submit that the entire problem is preeminently one for the State Legislature and now the City Council alone to solve. Consideration of the serious problems of these "pseudo" hotels and "decayed" hotels, plus the presumption of constitutionality, afford adequate support for these clarificatory amendments, enacted as an aid to enforcement of the law in the light of experienced abuse. Since appellants cannot possibly establish that the legislative action was without rational basis, the appeal should be dismissed, or the judgment of the Court of Appeals should be affirmed.

CONCLUSION

Since appellants present no substantial federal question, this Court should dismiss the appeal or affirm the judgment of the Court of Appeals.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1963

No. 845

378 REALTY CORP., 110TH ST. HOTEL CORP., TIMNAT ASSOCIATES, INC., PETER STUYVESANT 86TH CORP., SCHUYLER ASSOCIATES, VICTOR ASSOCIATES, INC. and ENDICOTT APARTMENT HOTEL, suing on behalf of themselves and all other owners, operators and lessees of hotels similarly situated in the City of New York,

Appellants,

v.

NEW YORK CITY RENT AND REHABILITATION ADMINISTRATION and HORTENSE W. GABEL, individually and as City Rent and Rehabilitation Administrator,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

APPELLANTS' MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS APPEAL

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On Appeal From The Court of Appeals of The State of New York

APPELLANTS' MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS APPEAL

Introduction

Despite Appellees' attempt to place Appellants in a posture of challenging rent control *per se* in the City of New York, the issues presented by the instant appeal are confined to challenging *a section* of the rent control statute;

i.e., § Y51-3.0(e)(2)(c) [1] of the New York City Rent and Rehabilitation Law, (and the corresponding section of the Emergency Housing Rent Control Law of New York State [2] from which it was copied) which retrospectively and arbitrarily *reimposes* rent control on residential hotels in New York City previously decontrolled by legislative and administrative action. And the challenge to this section *is not* to the legislative wisdom in enacting the particular legislation, but rather (1) to the legislative reimposition of controls on this particular class of property without any factual basis therefor in terms of an existing emergency; (2) to the enactment of an unbridled grant of authority to an administering agency to deprive property owners of vested rights on whatever basis the agency deems appropriate; and (3) to the initial imposition on certain property owners, by the legislature, of a condition impossible of fulfillment as a necessary prerequisite to the continued enjoyment, by such property owners, of rights and benefits previously acquired.

In short, notwithstanding the "Counter Statement of Questions Presented" (Appellees' Motion to Dismiss,[3] p. 4), the instant appeal does *not* concern itself with *what* the New York State Legislature (and subsequently the City Council of the City of New York) attempted to do, but rather with the fundamental constitutional questions of what it actually did do.

In reaching these questions, two threshold points require comment. Appellees see fit to "note" (App. Mot., p. 4) what are characterized as "self-serving claims and extracts of parts of incomplete administrative proceedings which are pending determination in the City rent agency,"

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[1] Formerly § Y41-3.0(e)(2)(c); renumbered by c. 100, Local Law 1963, eff. March 19, 1963.

[2] Ch. 337, Laws of 1961, § 2(2)(b).

[3] Hereafter referred to as (App. Mot., p. —).

and claim that "[t]hese materials are not properly here, * * *." Suffice it to say at this juncture that any factual material referred to in the Jurisdictional Statement is supported by the record before this Court, *is uncontradicted in the record* and illustrates the manifest vices of the challenged statutes.

Furthermore, Appellees' argument that the challenged amendments to the Emergency Housing Rent Control Law were "clarificatory" of the existing rent control law, while successfully foisted upon and accepted by the New York State Legislature (1959 McKinney's, *Session Laws of New York*, p. 1835), and adopted by the New York Courts (see, *Matter of Noxon Operating Corporation* v. *Herman*, 32 Misc. 2d 557, aff'd 16 A D 2d 774, aff'd w/o op. 13 N Y 2d 604) flies in the very face of the statutory history of rent control as it existed under the federal government (1943 to 1950) and under the State of New York at the time of its "take-over" of such controls in 1950 and thereafter until 1961.

Additionally, Appellee's unilateral foisting upon appellants of a position vis-a-vis the "predicate for these housing rent control laws" (App. Mot., p. 14) is unwelcome and unwarranted. Even a cursory reading of the Jurisdictional Statement makes clear that appellants take no position concerning "the continuance of the housing emergency", that not being at all relevant to this appeal, but rather dispute the existence of an emergency *relating to hotel accommodations*. This last is one underlying predicate for the particular "rent control laws" here challenged.

Argument

1. The "base date":—

Appellants and Appellees both stress March 1, 1950 as the key date involved in the proper interpretation of the 1961 amendment to § 2(b) of the New York State Emergency Housing Rent Control Law and the successor pro-

vision of the New York City Rent and Rehabilitation Law. And the emphasis is properly placed for it is this date, and its role in the State scheme of rent control of residential hotels, which gives principal rise to the Appellants' rights and makes confiscatory their summary divestment by subsequent legislation. Throughout their motion to dismiss, Appellees continually emphasize that March 1, 1950 is the "admitted base date"—which it is—and then proceed to argue from a false premise, *i.e.*, that this date, as adopted by the initial State Rent Control Act and Regulations, effected no change in the pre-existing federal rent laws and merely provided an harmonious blending of the old with the new. Appellants' purported confusion as to this statutory harmony is ascribed, by appellees, as the underlying basis for this, to them, meritless appeal (App. Mot., p. 6).

Unfortunately, Appellees have not, do not and will not read their statutory history. This history clearly demonstrates that when the State Rent Administrator, and subsequently the Legislature, adopted a regulation *fixing* March 1, 1950 as the qualifying date for the acquisition of "hotel status" *a brand new criterion was established within the statutory scheme of rent control.* It was then established, for the first time, that insofar as hotels were concerned the key consideration for decontrol was what the premises were, *in fact*, on March 1, 1950 and *not* what the federal classification was on that date.

Appellees finally agree—at least they so state (App. Mot., p. 8)—that under the Housing and Rent Act of 1949, the only hotel premises which were recognized as such by the federal rent control authorities were those which were regarded as such in the community on June 30, 1947. No matter what had occurred to a particular premises subsequent to June 30, 1947, it was of no consequence to the federal scheme of controls and any prior classification was carried forward intact until the State took over control responsibility in 1950. In this light, Appellees insist that

the federal classification on March 1, 1950 (and not what the premises were in fact on that date) was the sole determination of the forevermore classification of a particular premises. Appellees ignore the plain fact that the first State Rent Administrator, McGoldrick, recognized that change could, and did, take place between June 30, 1947 and March 1, 1950 and that additional hotels had come into being. Acting within the purview of his statutory authority, the then Administrator said, in effect, "Let's forget what the Federal government did or did not do concerning *classification* of these properties (hotels) but rather let's see what the premises *actually were* on March 1, 1950". Rent and Eviction Regulation §3(10), effective May 1, 1950,[4] was promulgated to incorporate this approach and from the very outset of its assumption of control, the State Rent Commission established a brand new criterion for the decontrol of residential hotels.[5]

Nor is the foregoing pure conjecture by Appellants as to the mental processes employed by Administrator McGoldrick when the first Rent and Eviction Regulations were promulgated. The uncontradicted record before this Court contains a complete copy of the Administrator's opinion in *Matter of Bayron* (Ex. pp. 121-127) which clearly sets forth all of the foregoing and for all to see. Moreover, the uncontradicted record details the establishment of procedures by the Administrator, whereby the *factual* status of each premises as of *March 1, 1950* was established and decontrol resulted where justified.[6]

In arguing around the uncontradicted record, Appellees assert that great significance should be attached to the

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[4] R. 38. This regulation was approved and ratified by the Legislature in 1951 by L. 1951, c. 443, § 2, eff. April 2, 1951.

[5] Transient hotels had been continued as decontrolled premises by the first State Rent Act (R. 37).

[6] *See*, Jurisdictional Statement at pp. 9-10.

mass of "meticulously kept" records of the federal government, all of which were acquired by the State Rent Commission when it assumed jurisdiction in 1950. They then argue that under the "clarificatory" (i.e., restatement of what, after all, was existing law at the time) amendment of 1961, the present Administrator need only refer to these voluminous records to immediately ascertain "what the establishment was under the then federal rent law on that base date", March 1, 1950 (App. Mot., p. 14) because that fact is conclusive of its status today and forevermore.

The fallacy of this argument is that if this is all the present Administrator need do in order to ascertain the status of an establishment under the law, as they hold it always was, then this is all that Administrator McGoldrick need have done in 1950, 1951 and 1952 and there would have been no need for procedures under which proofs *de novo* were taken as to the *factual* status, as opposed to classification status, of a particular premises on the base date of March 1, 1950. But since the State Law *changed* then existing law, it was necessary for the proofs to be taken, as they were, of the facts relevant to a particular establishment under the new law as so changed. And no amount of equivocal argument can alter the historical fact that the law was so changed.

When, in 1961, the Legislature was induced to amend the definition of a hotel in the Rent Control Law, it again effected a major *substantive* change in the decontrol provisions of the statute and without a reasonable relationship to any purpose sought to be served thereby, mandated that previously acquired "decontrol status" would henceforth be determined by the identification or classification pursuant to the Federal Act. Although the then existing facts of life concerning many establishments not previously "identified or classified as a 'hotel', 'transient hotel' or 'residential hotel' pursuant to the Federal Act" impelled an earlier rejection of this test for decontrol

(*supra*, pp. 4-6), eleven years later the Legislature, claiming to merely restate existing law, summarily deprives Appellants of valuable vested rights in their properties by imposing a *new* condition impossible of fulfillment. Such deprivation, we submit, is tantamount to deprivation without due process of law and patently unconstitutional.

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2. The lack of statutory standards:—

Wholly aside from the retrospective aspect of the challenged statutory provisions, this Court has held that a statute which *does* prescribe standards "sufficiently definite and precise to enable Congress, the courts and the public to ascertain whether the Administrator, in fixing the designated prices, has conformed to those standards" does not constitute an unauthorized delegation of legislative power and does not offend against the constitutional requirement of due process. *Yakus* v. *United States*, 321 U. S. 414, 426 (1943). Conversely, of course, a statute which *does not* prescribe sufficient standards by which the Legislature, the courts[7], the general public[8], or even the Mayor of the City of New York[9] (whose rent control agency and Rent Administrator are Appellees herein) can ascertain the underlying predicates and uniformity of administrative action *does* offend the due process requirement of the constitution and is clearly invalid.

Appellants argued below, and have submitted to this Court[10] that the challenged statutes lack such definite standards, if any standards at all. Appellees on the other hand have chosen to ignore this issue and have not, as they can-

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[7] *E.g., Matter of Bayview Hotel, Inc.* (1963), 12 N. Y. 2d 425.

[8] R. 52-56; R. 79-80 and Ex. pp. 1-5; R. 83-85 and Ex. pp. 6-83; R. 109-111 and Ex. pp. 93-100, 101-118.

[9] See, Jurisdictional Statement, p. 16, fn. 7.

[10] Jurisdictional Statement, p. 4, question 2, *id.*, pp. 15-16.

not, advanced the slightest refutation of the uncontradicted, documented facts set forth in the record before this Court. Rather, Appellees rely on generalized labeling of premises as "pseudo" or "decayed" hotels, which clearly the representative Appellants are not[11]; the Schuyler Arms, National and Peter Stuyvesant Hotels have been established hotel premises for upwards of fifty years; the Cambridge Hotel has been a recognized residential hotel for more than twenty years (R. 83-84) and modernized and maintained as such; and the West End Plaza, Imperial Court and Endicott Apartment Hotels are formerly non-hotel premises which were converted, at great cost (R. 79-80; 87-88; 109-110), into residential hotel premises.

Despite the foregoing *facts*, and despite their very own inspection reports to the contrary[12], Appellees, acting pursuant to the blanket, unfettered authority granted by the New York Legislature, determined that the affected premises (and many more similarly situated) were either "pseudo" hotels or "decayed" hotels.

But, on what bases were these determinations made?

Clearly, the "opinion" hotels were not "pseudo" hotels but were, in fact, hotels within the purview of the statutory criteria established by the Legislature and were specifically found to be so by the Rent Administrator[13]. And, those hotels which had been such before as well as during the federal rent control period were certainly not "pseudo" under *any* interpretation of the State Act.

The determination of what constitutes, for Appellees, a "decayed" hotel is even more difficult. Appellants have contended, and still contend, that the statute provides no help in this regard.

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[11] Ftn. 8, *supra*.

[12] R. 80, Ex. pp. 1-2; R. 110, Ex. pp. 93-100, 101-118; R. 88-89, Ex. pp. 84-86.

[13] *Supra*, pp. 4-6.

When, for example, does a hotel furnish the "customary hotel services", or fail to do so, so that it "can no longer quality for [hotel] status"? Quite clearly the law does not say. True, an establishment contending for "hotel status" must "*customarily* provide hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service", but in accord with what "custom"? Is it that of its immediate neighbor, or rather of some other establishment located in a different part of the same county or even a different county of the City of New York? And, is the "custom" to be different if the establishment is strictly a residential hotel catering to weekly or monthly tenants as distinguished from one strictly transient in operation?[14] Moreover, when the law speaks of services "such as" maid service, etc., does it mean that these specified services *must be rendered* or is the phrase included purely for purposes of definition?[15] To continue is to labor the point but, manifestly, more questions can well be asked than answers given. Appellees, needless to say, have never given any answers and do not yet in this Court.

Some reliance is placed, by Appellees, on the New York Court of Appeals' decisions in *Matter of Bayview Hotel, Inc.* v. *Temporary State Housing Rent Commission*, 12 N Y 2d 423 (1963); *Proche* v. *McGoldrick*, 307 N. Y. 760 (1954); and the very case now in this Court by this appeal, *378 Realty Corp.* v. *New York City Rent and Rehabilitation*

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[14] See, *e.g.*, *Emergency Price Control Extension Act of 1946* (R. 34).

[15] Appellees seemingly concede that "insofar as hotels are concerned, the Legislature did not attempt any new definition or formula of what constitutes a hotel" from that which existed under the federal law (App. Mot., p. 7). Accepting this *to the extent of* the "services" requirement, the federal requirement was *considerably less* than the State and City Administrators contend is now required. *See*, R. 45 at ftn. 5 and authorities cited.

Administration, 13 N Y 2d 817 (1963), as well as the decision of the Appellate Division of the New York Supreme Court, First Department, in *Matter of Hotel Armstrong* v. *Temporary State Housing Rent Commission*, 11 A D 2d 395. The court below, at Special Term, also relied heavily on *Armstrong* in finding sufficient "statutory standards" to warrant granting the judgment of constitutionality affirmed in the Court of Appeals below and now here on appeal. We submit, however, that such reliance is misplaced.

A careful reading of *Baycrest*, *supra*, makes clear that in reaching the decision it did, the New York Court of Appeals did not pass on the issues involved in the instant appeal for it was not necessary for that Court to reach them. The opinion of Judge Burke clearly indicates that, in the view of the Court, *the extensive renovations made to the vacant premises, subsequent to acquisition by the new owners, and the nature of the operation commenced by the new owners in 19* destroyed it as a hotel in fact and in the community in which located and therefore subjected it to re-control by "operation of law." The Court, as it stated, (12 N Y 2d at 428) found it unnecessary to consider the question of the 1959 amendments to § 2(b) of the State rent control law; the "Federal status" requirement of the 1961 amendment to § 2(b), not being before the Court, was not passed upon.

An equally careful reading of *Proche*, *supra*, also makes clear, that both the decision of the Appellate Division, Second Department, 283 App. Div. 728-729, and the affirmance by the Court of Appeals, *without opinion*, 307 N. Y. 760, were narrowly confined to the particular facts of that case and do not remotely support the broad proposition contended for by Appellees (App. Mot., p. 6).

No comment is required relative to the citation, by Appellees, of the lower court's determination of the issues involved in this very appeal as authority for anything in this Court.

Finally, the Justice at Special Term below relied heavily on *Armstrong* [16] for his conclusion of constitutional validity of the challenged statutes and regulations. But the Apellate Division of the New York Supreme Court, in *Armstrong*, was *not* considering the underlying question of whether the statute challenged there contained constitutionally acceptable standards upon which to predicate recontrol of previously decontrolled hotel premises. *It presumed constitutionally valid recontrol in the first instance* and confined itself to considering whether sufficient standards existed *for the fixing of maximum rentals in such recontrolled premises.* The reliance upon *Armstrong* as authority for the cardinal "standards" issue present in *this* appeal was and is, we submit, misplaced.

There is no decisional determination in New York squarely holding that the statutes in question do or do not contain the requisite constitutional standards either for the guidance of the administering agency in first determining the appropriate hotel status of a particular establishment, or for the guidance of the courts and general public in determining whether the legislative will—whatever that may be—is being carried out by the Administrator. Appellants have urged below and urge here that no such standards do exist and the statute is constitutionally invalid by reason thereof. It is submitted that Appellees' continuous refusal to meet this issue in any of the lower courts, or in this Court, lends visible support to Appellants' contention. It is an important issue, presently and properly before this Court, and one we believe this Court should pass upon.

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3. The "hotel emergency":—

Appellants have heretofore argued in the courts below and urge upon this Court that the challenged statutes bear

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[16] *Matter of Hotel Armstrong v. Temporary State Housing Rent Commission*, 11 A D 2d 395.

Administration, 13 N Y 2d 817 (1963), as well as the decision of the Appellate Division of the New York Supreme Court, First Department, in *Matter of Hotel Armstrong* v. *Temporary State Housing Rent Commission*, 11 A D 2d 395. The court below, at Special Term, also relied heavily on *Armstrong* in finding sufficient "statutory standards" to warrant granting the judgment of constitutionality affirmed in the Court of Appeals below and now here on appeal. We submit, however, that such reliance is misplaced.

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There is no decisional determination in New York squarely holding that the statutes in question do or do not contain the requisite constitutional standards either for the guidance of the administering agency in first determining the appropriate hotel status of a particular establishment, or for the guidance of the courts and general public in determining whether the legislative will—whatever that may be—is being carried out by the Administrator. Appellants have urged below and urge here that no such standards do exist and the statute is constitutionally invalid by reason thereof. It is submitted that Appellees' continuous refusal to meet this issue in any of the lower courts, or in this Court, lends visible support to Appellants' contention. It is an important issue, presently and properly before this Court, and one we believe this Court should pass upon.

3. The "hotel emergency":—

Appellants have heretofore argued in the courts below and urge upon this Court that the challenged statutes bear

[16] *Matter of Hotel Armstrong* v. *Temporary State Housing Rent Commission*, 11 A D 2d 395.

no reasonable relationship, either factually or logically, to any *new* emergency found by either legislative body to exist with regard to hotels accommodations.[17] In fact, quite the contrary was true at the times of enactment and is still true today.[18] Without such relationship and application of the statute to an actual and manifest evil justifying the employment of the police power of the state and city, the statutes violate the fundamental principles of due process and are unconstitutional. *Nebbia* v. *New York*, 291 U. S. 502 (1934). Appellees have consistently failed to meet this issue below, as indeed they could not, and still do not meet it in this Court. We attach significance to their silence.

The uncontradicted record and the expert opinion contained therein, plainly demonstrate[19] that the uncontrolled and *ad hoc* determinations of Appellees substantially threaten both the economic base of a consequential industry in the City of New York and of each entrepreneur engaged therein.

This Court requires no argument that substantial economic advantages accrue to any business that is free from restrictive controls. The traditional and practical controls imposed by the market place are more than sufficient to impel owners and operators of any business to look to the quality of their product if they hope to survive. This is no less true of an owner or operator of a hotel—whether transient or residential—particularly when faced with a declining, i.e., more competitive, market. And this is precisely what the New York State Commission to Study Rents and Rental Conditions found to be the existing facts of

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[17] Jurisdictional Statement, pp. 17-18.

[18] *Ibid.*

[19] R. 74, Ex. p. 92; R. 95-103.

"hotel accommodation" life in 1957,[20] two years *prior* to the first amendment of the State Rent Control Law affecting hotel properties[21] and four years prior to the challenged state amendment involved herein. The New York City Council "found" nothing different; it "found" nothing at all (R. 52-53).

Where, therefore, the rent control statutes to which the challenged amendments are appended are bottomed upon legislative findings of the existence of an "acute shortage of dwellings" as an aftermath of the last war necessitating the continuance of controls in order to prevent "disruptive practices and abnormal conditions"[22], and where, despite the foregoing, controls on residential hotels had been deemed unnecessary for a period of eleven years prior to the enactment of the 1961 amendment to § 2(b) of the State Act, the reimposition of such controls without a factual base or finding of a *new* and compelling emergency resulting in an "acute shortage of dwellings" and the known concomitants thereof is an improper and invalid exercise of the police power. The resulting confiscation of the vested property rights of Appellants is without due process of law and unconstitutional. The courts below have denied Appellants relief and this Court is the only tribunal wherein such relief may be obtained.

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[20] McKinney's, 1957 *Session Laws of New York* at pp. 1535, *et seq.*

[21] L. 1959, c. 695, § 2(b).

[22] L. 1946, c. 274, § 1, as amended, Mck., *Unconsol. Laws*, Vol. 65, Part 3, § 8581; New York City Administrative Code, Title Y, § Y51-1.0

CONCLUSION

By reason of the foregoing, and the reasons advanced in the Jurisdictional Statement heretofore filed with this Court, Appellees' motion to dismiss the instant appeal or in the alternative to affirm the judgment below should be denied and this appeal should be accepted and decided by this Court.

Respectfully submitted,

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